

APRIL 12, 2006

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April 12, 2006

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Smith, from the 48th District. Senator, please.

SENATOR SMITH: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Smith, for doing that for us. We appreciate it. I call the fifty-ninth day of the Ninety-Ninth Legislature, Second Session, to order. Senators, please record your presence. Record please, Mr. Clerk.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SENATOR CUDABACK: Mr. Speaker, if you wish to be recognized, you are.

SPEAKER BRASHEAR: Mr. President, thank you. Good morning, all, members. Mr. President, would you rise where you sit. Would you stand up, please. I'd like the body to join me in expressing our affection for and appreciation of Mr. President, Senator Cudaback, on this, his birthday, and...just a minute. I am told that he is serving free ice cream in the senators' lounge. (Laughter) (Applause)

SENATOR CUDABACK: It's not from the Easter Bunny; it's Blue Bunny. Thank you. I appreciate that. You didn't have to do that. Thank you. Mr. Clerk, corrections for the Journal? I'm kind of shook up, here.

ASSISTANT CLERK: Mr. President, there are no corrections this morning.

SENATOR CUDABACK: Messages, reports, or announcements?

ASSISTANT CLERK: I have none at this time, Mr. President.

SENATOR CUDABACK: We now go to legislative confirmation reports. Senator Stuhr, Chairperson of the Nebraska Retirement Systems, you're recognized to open. (Legislative Journal

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page 1365.)

SENATOR STUHR: Thank you, Mr. President and members of the body. The Nebraska Retirement Systems Committee held a confirmation hearing on March 29, 2006, for Mr. David Bomberger, who has been appointed by the Governor to replace Carol Kontor, the outgoing State Investment Officer who has served in that position since August 2002, and has been with the Nebraska Investment Council since 1998. The State Investment Officer directs the investment and reinvestment of money in accordance with the procedures established by the seven-member Nebraska Investment Council. The Investment Council manages the investment of the operating investment pool, the state's defined benefit plans, the state's endowment funds, and the educational savings plan, to name a few. At the end of 2005, these funds' combined assets were \$11 billion. Mr. Bomberger is currently the president and chief investment officer for Caterpillar Investment Management. He manages a staff of 42 professionals, 11 subadvisors, and other multiple service advisors. During the selection process which led ultimately to the recommendation of Mr. Bomberger, 51 applicants were reviewed. These applicants were narrowed to six candidates who were personally interviewed by the search committee, and of these, three were interviewed in person by the Nebraska Investment Council. The Council unanimously recommended to the Governor that Mr. Bomberger be selected. Mr. Bomberger will bring a wealth of investment experience to the Investment Council, and he is well qualified to make decisions regarding the investment of public funds and to manage the activities of the State Investment Office. At this time, I would like to publicly thank Carol Kontor for her service as the State Investment Officer during the past three years, and also for her eight years serving as a part of the Nebraska Investment Council. She has done an (inaudible) job and we thank her for the service to the state and wish her the best as she pursues other opportunities. The Retirement Committee voted without objection to move Mr. Bomberger's appointment to the Legislature for confirmation. I would ask for your support in confirming David Bomberger to the position as the new State Investment Officer for Nebraska. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. Open for

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discussion on the confirmation report, Retirement Systems. Senator Stuhr, there aren't any lights on. Did you wish to close? The question before the body is adoption of the Retirement Committee confirmation report. All in favor of the motion vote aye; opposed nay. We're voting on the confirmation report offered by the Nebraska Retirement Systems Committee. Have you all voted on the report who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1611-1612.) 36 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR CUDABACK: The confirmation report has been adopted. Mr. Clerk, next report.

ASSISTANT CLERK: Mr. President, the Education Committee would report favorably on the appointment of Charles Ward to the Board of Educational Lands and Funds. (Legislative Journal page 1393.)

SENATOR CUDABACK: Senator Raikes, Chairman of the committee, you're recognized to open on the first report.

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. The Education Committee brings for your consideration the confirmation of Mr. Charles Ward to the Board of Educational Lands and Funds. Mr. Ward is a reappointment to the board. If confirmed, he would continue his service on the board until October 1 of 2010. Charles Ward is from Valentine. He's been in business as a locksmith since 1972. He's also worked as a plumber, and operated a small cattle operation in Cherry County. He is a graduate of Chadron State College, having earned a bachelor's of science degree in education in 1966. He also holds a degree in refrigeration from the Dunwoody Industrial Institute in Minneapolis. If you recall, the Board of Educational Lands and Funds is constitutionally vested with the authority of managing the state's educational trust lands. Those duties include issuing both surface and subsurface leases on educational lands, in addition to collecting the revenue generated by those leases. The board is

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also responsible for transacting the sale of educational lands as called for as part of its managerial duties. Income from the agricultural and mineral leases is directed to the temporary school funds for support of K-12 education. Revenue from the land sales and mineral royalties is deposited in the permanent school fund, the interest of which is also used to support education. The board is composed of five members, one from each of the congressional districts as they existed on January 1, 1961, as well as a member from the state at large. Mr. Ward serves as the at-large representative. With that, I'll close on behalf of the Education Committee, and ask your support. I'll mention that the Education Committee voted 7 to 0 to support this confirmation. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the first report. Open for discussion. Senator Raikes, there are not any lights on. Senator Raikes waives closing. The question before the body is, shall the first report offered by the Education Committee be adopted? All in favor vote aye; opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 1612.)
39 ayes, 0 nays on the adoption of the report.

SENATOR CUDABACK: The first report has been adopted. Mr. Clerk, next report, please.

ASSISTANT CLERK: Mr. President, the Education Committee would report on Dennis Miller Jr. to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 1393.)

SENATOR CUDABACK: Senator Raikes, Chairman, you're recognized to open on the second report.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. The Education Committee brings for your consideration the confirmation of Mr. Dennis Miller Jr. to the Nebraska Educational Telecommunications Commission. Mr. Miller is a new appointment to the commission, having been appointed to serve out the remainder of a term of current commission member Dr. Fred Brown. If confirmed, he would serve on the commission

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through January 9, 2007. Mr. Miller is a resident of Lewellen, Nebraska, where he farms, raising irrigated corn and alfalfa. Mr. Miller is also a retired armed services officer, having served for more than 25 years as a commander and nuclear propulsion engineer in the United States Navy. He holds a bachelor of science degree in aerospace engineering from the University of Kansas, and has also completed graduate work in mechanical engineering at the Illinois Institute of Technology. Mr. Miller is actively involved in several organizations in his community. He currently manages the Blue Creek Irrigation District in Garden County. He serves as vice chairman on the Western Nebraska Community College board of governors. He is the secretary and past president of the Lewellen Lions Club, as well as the current president and past secretary-treasurer of the Garden County Farm Bureau. Mr. Miller is also a member of both the Garden County veterans affairs and local emergency planning boards, in addition to numerous other community involvement activities both past and present. As a quick reminder, the Nebraska Educational Telecommunications Commission is composed of 11 members and is charged with the numerous powers and duties outlined in Section 79-1316 of Nebraska law. Those duties primarily center around promoting and sponsoring noncommercial educational television and radio stations in the state of Nebraska. With that, I'll close and, on behalf of the Education Committee, encourage your support for the confirmation of Mr. Dennis Miller to the Nebraska Educational Telecommunications Commission. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the second report, Education Committee. Open for discussion. There are no lights on, Senator Raikes. Senator Raikes waives closing. The question before the body is, shall the second report by the Education Committee be adopted? All in favor vote aye; opposed, nay. We're voting on the confirmation report offered by the Education Committee. Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 1613.)
42 ayes, 0 nays on the adoption of the report.

SENATOR CUDABACK: Mr. Clerk, the third and final report,

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please.

ASSISTANT CLERK: Mr. President, the Education Committee would report favorably on Steven E. Titus to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 1553.)

SENATOR CUDABACK: Senator Raikes, to open on report number three.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Dr. Steven Titus is also an appointee for your consideration to the NETV Commission. Dr. Titus is a new appointment to the commission. If confirmed, he would serve on the commission through January 9, 2010. Dr. Titus is a resident of Fremont, Nebraska, where he's served as president of Midland Lutheran College since 2002. Dr. Titus has earned a doctorate degree from the University of Virginia in higher education administration, and a law degree from Marquette University Law School. He also earned a diploma from the United States Army judge advocate general school in Charlottesville, Virginia, as well as a bachelor of science degree in business administration from the Southwest Minnesota State University. Dr. Titus brings an extensive resume of experience in the fields of both education and law. He's also involved in a number of community activities, which include membership on the board of trustees of Augsburg Fortress, the board of directors of Lutheran Planned Giving Services, and the board of directors of the Independent Association of Colleges and Universities of Nebraska. While Dr. Titus' resume is without a doubt very impressive, there were concerns about whether he would have time to serve on the commission. Those concerns were perhaps reflected in the difficulty we had in getting paperwork from Dr. Titus, as well as scheduling the confirmation hearing. Despite those concerns, the committee voted to advance this appointment to the floor for consideration by the full Legislature. The vote was 5 to 1. I will tell you that it is our committee's policy that the appointee must appear before the committee, or at least be willing to communicate over the phone, and be...subject themselves to cross-examination, and Dr. Titus did that. But I will just point out to you that we sort of had to insist on that. But having said that, I will tell you the committee did

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vote to support the confirmation, and so I would recommend it to you. Again, Dr. Steven Titus, the Nebraska Educational Telecommunications Commission.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on the third report by the Education Committee. Open for discussion. Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. I'll be very brief. I did vote against this confirmation coming out of committee, and I know that's fairly unusual. But as I understand it, it was basically like pulling teeth to get this gentleman to present himself and get his information. I'd asked the committee clerk to put together a little sheet kind of indicating how much work he had to do in prodding this gentleman along, and for over a month we had countless cancellations of the confirmation hearing, paperwork wasn't submitted on time, there would be a commitment, I'll get that Accountability and Disclosure paperwork sent in, and then the clerk would have to follow up a couple weeks later to, you know, encourage them to get that information in. And I know these things are largely perfunctory, but this one was so blatantly...I don't even know, uncooperative, that I just felt that...I voted no. And I'm going to continue to vote no. I'm not going to hold up the confirmation, but I just think that, you know, it should be a privilege to serve. And to have to practically beg this individual to submit his paperwork, come to the committee and present himself, it just...it was a...one of the worst confirmation hearing processes that I've been a part of, and I just...sometimes I think you just have to say, look, you know, if you want to serve, serve; if not, maybe you should think about doing something else. So anyway, that was my no vote coming out of committee. I'm going to vote no on his confirmation this morning.

SENATOR CUDABACK: Thank you, Senator Bourne. Further discussion? There are no lights on. Senator Raikes, you're recognized to close.

SENATOR RAIKES: Thank you, Mr. President, members. I'm going to support the confirmation, but I absolutely and continually

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respect the position that Senator Bourne just offered. I do think that this is something that is important enough that we give it attention in the committees. Like I say, this one did work out. But I hope we've raised the issue here, perhaps unfairly specifically with Dr. Titus, because I think he is a very strong candidate. But again, I will support the confirmation. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the closing by Chairman Raikes. The question before the body is, shall the third report by the Education Committee be adopted? All in favor vote aye; opposed, nay. We're voting on the confirmation report offered by the Education Committee. Have you all voted on the question who care to? We're voting on the third confirmation report, offered by the Education Committee, chaired by Senator Raikes. Have you all voted on the question? Members, have you all voted who care to? Senator Raikes, for what purpose do you rise?

SENATOR RAIKES: Mr. President, I would ask for a call of the house.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; all those opposed vote nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays to go under call, Mr. President.

SENATOR CUDABACK: The house is under call. All unauthorized personnel leave the floor. Unexcused senators report to the Chamber. The house is under call. All unexcused senators please report to the Chamber. Senator Schrock, would you check in, please. Thank you. Senator Landis. Senator Heidemann, please. Thank you. Senator Loudon, Senator Howard, please. Thank you. Senator Beutler, also, and Senator Thompson and Senator Bourne. Thank you, as well. Senator Raikes, everybody is checked in. How did you wish to proceed?

SENATOR RAIKES: I will accept call-in votes, please.

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SENATOR CUDABACK: He has authorized call-in votes. Mr. Clerk, when you get time, please accept call-in votes.

ASSISTANT CLERK: Senator Johnson voting yes...changing from no to yes. Senator Brashear voting yes. Senator Hudkins changing from no to yes.

SENATOR CUDABACK: Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1613-1614.) 25 ayes, 6 nays on the adoption of the report, Mr. President.

SENATOR CUDABACK: The third and final report by the Education Committee has been adopted. I do raise the call. (Visitors introduced.) We go to Government, Military and Veterans Affairs Committee. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the Government Committee would report on the appointment of Judy Schweikart to the Accountability and Disclosure Commission. (Legislative Journal page 1565.)

SENATOR CUDABACK: Chairperson Schimek, you're recognized to open.

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. The Government, Military and Veterans Affairs Committee desires to report favorably on the appointment of Judy Schweikart to the Accountability and Disclosure Commission. We had a hearing on this confirmation on Monday. And in light of the conversation that we just had on the Education Committee appointee, I'd like to briefly tell you about Judy, and then tell you about why I think she was somewhat the opposite of the last candidate that you just heard about. Judy is...this is a reappointment, as I said. She had served six...almost a year, a guess, after being appointed. We heard her at a confirmation hearing just last year. And when my staff called her this time to see if she would be able to come down, really on quick notice, for this confirmation hearing, she made herself readily available, and she told my staff that she thought it was very

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important that people come to these confirmation hearings if they were interested in serving in this particular office, or on this particular board or commission. And I thought that was exemplary. And she reiterated it yesterday. Judy Schweikart actually works for Kutak Rock. She's an attorney. She's had a long history of community involvement, and she's been involved in the political process. She is a Democrat. And she explained to us both times that she was willing to make the commitment to take herself out of politics in order to serve, and she reiterated yesterday that she thought it was very important that we had people with political experience on the commission, of both parties, because they understand some of the nuances of campaigns and political committees. She is, I think, a very astute and good member of the board. Having said that, I would also like to say that in conversations with Senator Stuhr a few weeks ago, when she mentioned the Education Committee appointee and the kinds of, perhaps, problems that she saw with the process regarding that appointee, the more we talked about it, the more we decided that maybe there ought to be an interim study done on the whole confirmation process. And so, because it was after the deadline, I went around and got the Government Committee to agree to introduce such a resolution, and it has been referenced to our committee. And I mention it because I do think we need to think about the confirmation process. And it shouldn't be perfunctory. I don't know how the Health Committee does all those confirmations. Is it fair to ask the Health Committee to do all those confirmations when they can't possibly take the time that maybe is needed to do? So what I'm asking you this morning is to be thinking about this. I don't know how the Government Committee is going to conduct this study, but I have an idea that maybe we'll at the very least want to survey all the committee chairs and ask them for feedback on how the process could be improved. Should every single appointee come under the confirmation process? Should every single appointee have to drive into Lincoln for that confirmation process? Should there be the opportunity to do telephone call-ins on occasions when the person might live in Sidney or Chadron or somewhere where it is a huge, long drive? Should we insist on some kind of appearance, if it...particularly, it's the first confirmation rather than a reappointment confirmation? I want you all to be thinking about this, and give me and the committee

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members input as to how you think the study should be conducted and what some of the questions are that we should be considering. It is important that we have good people. I think it's important that the Governor, whoever he or she may be, have confidence that the Legislature is pretty much going to approve their confirmations, unless there's some compelling reason not to. But I'm not sure if that's the right attitude, either. So be thinking about it, and we'll come back to you later in the interim. Meanwhile, I would ask for your approval of Judy Schweikart, who I think has the right attitude.

SENATOR CUDABACK: Thank you, Chairman Schimek. You've heard the opening. Open for discussion. Senator Combs.

SENATOR COMBS: Thank you, Mr. President and members of the body. I just wanted to take this opportunity to speak on the Government confirmation, to emphasize the importance of choosing the right people to serve on these commissions, because they do advise us on issues that are extremely critical and timely that are facing us now and in the coming decade. I did pass out to you this morning an article from the Lincoln Journal Star about the Placeks, who are from my district. And the challenges that this family is struggling with, it could happen to any of us anywhere in the state that have a same or similar situation. And these are the kind of situations that we need to be aware of. And the Placeks are here, and they really...they don't need or want our sympathy; they need advocacy, both at the state and federal level, to streamline our immigration process for individuals like Brissa. Brissa was a subject of an article in the paper by Cindy Lange-Kubick. And Brissa and her family do not want to engage in illegal activities, and we need to make sure that as the Government Committee and commission is looking at what we are doing in terms of immigration, what we're able to do on the state level, that we do differentiate between the people who are here legally that want to be in the process of naturalization, and those who have no intention of becoming naturalized. People who come to this country with no intention of establishing permanent residency status and abiding by our laws cause problems for themselves, our other citizens, our policymakers, and families like the Placeks. It is because the Placeks want to do the right thing that they are making plans

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for Brissa to return alone to a country that she doesn't know. If Brissa's immigration paperwork is not processed by June 17, she must leave her family and her home, or risk a three-year ban from this country. Frankly, I think Nebraska and the community of Wilbur are better off with Brissa right here where she is, and I hope her paperwork moves rapidly through the system. Our federal representatives must revise our national immigration policies. In the meantime, those of us who have been elected to serve Nebraskans at the state level need to be well informed about all the unexpected twists and turns and the lengthy, lengthy process involved in acquiring citizenship status. Hopefully, we can create links between constituents like the Placeks and the federal officials who can help them. So I want to extend a very warm welcome to them. They are under the balcony. And I would hope that some of us in the body could find time to go over and introduce yourselves to them and say hello to them today. Thank you.

SENATOR CUDABACK: Thank you, Senator Combs. Further discussion, confirmation report by the Government, Military and Veterans Affairs Committee. Senator Howard.

SENATOR HOWARD: Thank you, Mr. President, members of the body. I would like to take this opportunity to thank Senator Schimek for taking the initiative to look at the confirmation process. As a member of Health and Human Services Committee, it's been very troubling to me to have to vote on confirmations of individuals who can't take the time, or apparently, seemingly so, can't take the time to walk across the street from the State Office Building on a clear, sunny day to attend their own confirmation hearing and be present. This is especially troubling when it's a new appointment and the individual has no previous experience in this position. I thank Senator Schimek, and I think this is well overdue. I've expressed these same feelings in my committee. I welcome the opportunity to look at this issue and make this process meaningful. Thank you.

SENATOR CUDABACK: Thank you, Senator Howard. Senator Smith.

SENATOR SMITH: Thank you, Mr. President and members. I can't help but respond to the comments made about those who don't come

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down for their hearings per se. And I can certainly understand the purpose of doing so. I would also emphasize the fact that we have a big state here. And I am more than happy to represent my constituents in the Health Committee hearings that Senator Howard mentioned. And it's a very fair and open process, and I try to get information from my constituents who are unable to show up. But for someone to drive 450 miles, sometimes, one-way, for a question and answer period of less than five minutes seems a bit wasteful, whether it's personal resources or state resources. So I hope that we just look at this, take these things in stride. And certainly, I want to do everything I can to make sure that we have people show up for their confirmation hearings. But to be critical of those who don't show up, we need to look at the full picture, at the big picture. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Smith. Seeing no further lights on, Chairperson Schimek, you're recognized to close on the confirmation report by your committee.

SENATOR SCHIMEK: Thank you, Mr. Chairman...or, Mr. President and members. I appreciate the comments of Senators Howard and Smith, and those are the kinds of comments that I'd like to hear back from you over the interim. Senator Combs, I thank you for bringing the story of Brissa and her family to us. I think it is illustrative of the complications of the whole citizenship process. And it impacts, it really does impact families. And again, I think most people want to be good citizens. So I'm not going to prolong that, because it's not part of the confirmation process. But I would encourage you to vote in favor of Judy Schweikart for the Accountability and Disclosure Commission. Thank you, Mr. President.

SENATOR CUDABACK: Thank you. You've heard the closing, confirmation report. The question is, shall that report be adopted? All in favor vote aye; opposed vote nay. We're voting on the confirmation report by the Government, Military and Veterans Affairs Committee. Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1614-1615.) 41 ayes, 0 nays on the adoption of the

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report, Mr. President.

SENATOR CUDABACK: The report has been adopted. We go to the last report. Mr. Clerk, Health and Human Services.

ASSISTANT CLERK: Mr. President, the Health and Human Services Committee would report on Patricia Madsen to the Child Abuse Prevention Fund Board.

SENATOR CUDABACK: Chairman Jensen, to open.

SENATOR JENSEN: Thank you, Mr. President and members of the Legislature. The Health and Human Services Committee desires to report favorably upon the appointment of Patricia Madsen to the Child Abuse Prevention Fund Board. The committee suggests the appointment be confirmed by the Legislature. This is a new appointment for a one-year term to fill a vacancy on the board. She is a teacher from Stuart, Nebraska. Appeared before the committee on Tuesday, April 11, and the committee voted unanimously, with two members absent, to recommend confirmation of the appointment. Ms. Madsen appeared in person, with her husband. She is, I think, the ideal person to serve on a board like this. She is a teacher who is a lifelong Nebraskan, taught in Rock County High School, Stuart Public Schools, West Holt High School, where she is presently employed. She was a Teacher of the Year, received the Teacher of the Year award in 2000; has been very active in her community. She has both a bachelor's degree and a master's degree; a delightful person. This was the 51st confirmation that the Health and Human Services had this year. And I would certainly endorse Senator Schimek's interim hearing, or interim study to look at how we do these confirmations. This was an individual who initially sought to be on the Nebraska Commission on the Status of Women. She told us that. There wasn't a vacancy there, but they thought enough about her that she should serve on a board, and asked her if she would serve on this Child Abuse Prevention Board...Fund Board. And certainly, with her experience in working with kids, she is ideal. So with that, Mr. President, I would certainly recommend the name of Patricia Madsen for approval. Thank you.

SENATOR CUDABACK: Thank you. You've heard the opening on the

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confirmation report. Open for discussion. Senator Jensen, there are no lights on. The question before the body is, shall the report offered by the Health and Human Services be adopted? All in favor vote aye; opposed, nay. We're voting on the confirmation report offered by Health and Human Services Committee, presented by Chairman Jensen. Have you all voted on the question who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 1615.)
34 ayes, 0 nays on the adoption of the report, Mr. President.

SENATOR CUDABACK: The report has been adopted. That does complete that portion of the agenda. We now go to the next item, Final Reading. Members, we are on Final Reading. You know the rules. Members, we are on Final Reading. All unauthorized personnel please leave the floor. The first vote will be to dispense with Final Readings (re LB 1199). All in favor vote aye; opposed, nay. At-large reading, rather; not Final Reading. Voting on to suspend the at-large reading. Please record, Mr. Clerk.

ASSISTANT CLERK: 41 ayes, 2 nays to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The motion was successful. Mr. Clerk, please read the title of LB 1199.

ASSISTANT CLERK: (Read title of LB 1199.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1199 pass? All in favor vote aye; opposed vote nay. (Visitors introduced.) Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1616.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1199 passes. We now go to LB 1199A, Mr. Clerk.

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ASSISTANT CLERK: (Read LB 1199A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1199A pass? All in favor of the motion vote aye; all those opposed to the motion vote nay. Have you all voted on the question who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1617.) The vote is 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1199A passes. We now go to LB 1222E, Mr. Clerk.

ASSISTANT CLERK: (Read LB 1222 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1222E pass with the emergency clause attached? All in favor of the motion vote aye; those opposed, nay. Have you all voted on the question who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1618.) The vote is 41 ayes, 2 nays, 5 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1222E passes with the emergency clause attached. We now go to LB 1222AE. Mr. Clerk.

ASSISTANT CLERK: (Read LB 1222A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1222AE pass with the emergency clause attached? All in favor of the motion vote aye; opposed, nay. Have you all voted on the question who wish to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1618-1619.) The vote is 41 ayes, 0 nays, 7 present and not voting, 1 excused and not voting, Mr. President.

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April 12, 2006 LB 57, 1222A, 1226, 1226A

SENATOR CUDABACK: LB 1222AE passes with the emergency clause attached. We now go to LB 1226E. The first vote will be to suspend the at-large reading; 6, 8. All in favor vote aye; opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: 38 ayes, 3 nays to dispense with the at-large reading, Mr. President.

SENATOR CUDABACK: The at-large reading is dispensed with. Mr. Clerk, please read the title of LB 1226E.

ASSISTANT CLERK: (Read title of LB 1226.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1226E pass with the emergency clause attached? All in favor vote aye; opposed, nay. Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1620.) The vote is 45 ayes, 2 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1226E passes with the emergency clause attached. We now go to LB 1226A. Mr. Clerk, please.

ASSISTANT CLERK: (Read LB 1226A on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1226A pass? All in favor vote aye; opposed, nay. Have you all voted on the question who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1620-1621.) The vote is 42 ayes, 2 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1226A passes. We now go to LB 57E. Mr. Clerk.

ASSISTANT CLERK: (Read LB 57 on Final Reading.)

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April 12, 2006 LB 57, 79, 1148

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 57E pass with the emergency clause attached? All in favor vote aye; opposed, nay. Have you all voted who care to? Record please, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1621-1622.) The vote is 46 ayes, 1 nay, 1 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 57E passes with the emergency clause attached. We now go to LB 79. Mr. Clerk.

ASSISTANT CLERK: (Read LB 79 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 79 pass? All in favor of the motion vote aye; opposed to the motion, nay. Have you all voted on the question who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1622-1623.) The vote is 45 ayes, 0 nays, 3 present and not voting, 1 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 79 passes. We now go to LB 1148. Mr. Clerk.

ASSISTANT CLERK: (Read LB 1148 on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LB 1148 pass? All in favor vote aye; opposed, nay. Have you all voted who care to? Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1623.) The vote is 49 ayes, 0 nays, 0 excused and not voting, Mr. President.

SENATOR CUDABACK: LB 1148 passes. (Visitors introduced.) We

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April 12, 2006 LB 57, 79, 808, 819, 856, 856A, 898, 904
 956, 956A, 962, 962A, 994, 994A, 1010, 1038
 1107, 1148, 1189, 1189A, 1199, 1199A, 1222
 1222A, 1226, 1226A
 LR 274, 309, 440, 443, 444, 452

now go to the last issue, LR 274CA. Mr. Clerk, please.

ASSISTANT CLERK: (Read LR 274CA on Final Reading.)

SENATOR CUDABACK: All provisions of law relative to procedure having been complied with, the question is, shall LR 274CA pass? All in favor vote aye; all those opposed, nay. Please record, Mr. Clerk.

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1624.) The vote is 49 ayes, 0 nays, 0 excused and not voting.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: LR 274CA is adopted. Thank you. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do now sign the following legislative resolutions: LR 440, LR 443, and LR 444. Members, in addition, I propose to sign and do now sign the following legislative bills: LB 1199, LB 1199A, LB 1222E, LB 1222AE, LB 1226E, LB 1226A, LB 57E, LB 79, LB 1148, and LR 274CA. Thank you.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Mr. Clerk, items for the record, please, or messages?

CLERK: Mr. President, communication from the Governor to the Clerk. (Read re LB 808, LB 819, LB 856, LB 856A, LB 898, LB 904, LB 956, LB 956A, LB 962, LB 962A, LB 994, LB 994A, LB 1010, LB 1038, LB 1107, LB 1189, and LB 1189A.)

Mr. President, I have a Reference report referring LR 452, and the introduction of LR 452 by Health and Human Services, to the Health Committee for interim study. Mr. President, a new...your Committee on Government reports LR 309 back to the Legislature for further consideration. And that's all that I have, Mr. President. (Legislative Journal pages 1625-1626.)

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SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to the next agenda item, motion. Mr. Clerk, please.

CLERK: Mr. President, Senator Hudkins, as Chair of the Rules Committee, reports on a proposed rules change regarding Rule 3, Sections 3 and 6. The rules change that is being offered is found on page 1034 of the Legislative Journal.

SENATOR CUDABACK: Senator Hudkins, as Chairperson, you're recognized to open on your motion.

SENATOR HUDKINS: Thank you, Mr. President and members of the body. As our Clerk said, the motion that we're attempting to change, again, is found on page 1034 if you want to refer to that. As you may remember, at the beginning of the session, the Retirement Committee requested that the standing committee structure and meeting times be reviewed, so that the Retirement Committee would have a designated day for their meetings. There was also discussion and a request to change certain membership numbers on some of the committees. At that time, the rule provided that the Retirement Committee met at the call of the Chair, and would meet during the noonhour. The Rules Committee met, and at that hearing Senator Schrock indicated that the Natural Resources Committee might be able to accommodate the Retirement System by cutting back to two days a week, so long as the two days were Wednesday and Thursday. The Rules Committee accepted Senator Schrock's proposal, and recommended a rules change to the full Legislature for consideration. As you know, the Rules Committee does not determine the days that the committees meet, nor the number of days that a committee has for its hearings during the week. Prior to the adoption of permanent rules for this year, that was left up to the Committee on Committees. When we adopted the permanent rules for the session, we amended the rule to also require approval of the Executive Board for setting committee structure and meeting times. In early March, the Committee on Committees met to work out the committee structure to accommodate the concept of giving Retirement one of the days from Natural Resources. It was recognized early on that if Natural Resources kept two out of the three days, then the membership on Natural Resources would need to be the membership on Retirement. The Committee on

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Committees, after discussion, concluded that instead, the method to take was to combine the Retirement Committee with the Banking, Insurance, and Commerce Committee. The combined committee would have two legal counsels. This recommendation was forwarded to the Executive Board. The Executive Board did not concur with this recommendation, and sent it back to the Committee on Committees. During all of this, there was also discussion to, on Wednesdays, have the various committees begin their committee hearings at 2:00 to allow the Retirement Committee more time. This also met with objection. The Committee on Committees met again, and concluded that the best situation was not to change the committee structure at all. Instead, they referred a proposal to the Rules Committee to revert the rules back to the way they were prior to the adoption of permanent rules earlier this session. The Rules Committee held a public hearing, and before in the committee was Senator Schrock, Senator Stuhr, and Patrick O'Donnell, the Clerk of the Legislature. The proposed rules change was discussed, and the Rules Committee voted unanimously to refer the current proposal to the full Legislature for adoption. So, finally, what I've said is, what we are voting on, then, is returning the rules to what they were before any of these proposals were discussed. The Retirement Committee would still meet at the call of the Chair, and the membership numbers of the Government Committee, the Health Committee, and the Retirement Committee would stay as they were. If you have any questions, I would try to answer them for you. And thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Hudkins. (Visitors introduced.) Senator Erdman, on the motion, followed by Senator Stuthman.

SENATOR ERDMAN: Thank you, Mr. President. The world is definitely not flat, because we have gone around the world, and here we stand in the exact same spot we did at the beginning of session. I would request to correct Senator Hudkins' comments that the Retirement Committee requested the change, because it was actually I who requested the change, and it was broader than what was actually presented. And Senator Stuhr was a part of that discussion. But I believe, if you'll remember back to the discussion before the Rules Committee, there were a number of

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proposals that would have done more than what we were asked to do. And we were told that we couldn't do that, and so we would do this. And now we evidently can't even do this. So this is phenomenal. This is good lawmaking, or whatever you want to call it. I would like to ask Senator Hudkins a few questions, if I may.

SENATOR CUDABACK: Senator Hudkins, would you yield?

SENATOR HUDKINS: Yes, yes I would.

SENATOR ERDMAN: Senator Hudkins, I can understand the concern or possibly the frustration that you may feel after this process. But explain to me why the decision was made--when the obvious focus is to address the retirement issue to not affect other committees--why the decision was made to return the other committees back to their previous committee membership as well.

SENATOR HUDKINS: At the time that this was changed, some of the committees felt that because they were dealing with an extremely large amount of money that they really did more membership to help make that decision. So the Health and Human Services Committee was increased at the expense of the Government Committee. And we figured, you know, if we're going back to square one, we might as well really go back to square one.

SENATOR ERDMAN: Okay, thank you, Senator Hudkins. Members of the Legislature, I, at this point, don't care, to be honest with you. For the past three years, I have been working to try to come up with a more logical process for our committees to meet. I think the language that was adopted actually provided more flexibility for committees to be able to meet at appropriate times at the approval of the Executive Board, which is being stricken. I can accept this whole process. I think it's unfortunate that we as a Legislature can't analyze our process and decide that we have areas that need to be addressed, not only in law but in our process. And unfortunately, we're being asked to go back to that old process that, for the last 20 years, we've been talking about trying to fix. So we're going to go back to where we were, that way we can maintain the status quo around here. And again, I'm just extremely amazed at

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our process. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. As we said before, the rule change now has brought us back full circle to where we were at the beginning of the session. When we originally discussed the issue of giving the Retirement Committee an afternoon time slot in the opening days of the legislative session, there was much discussion and it was felt that the Retirement Committee should have some additional time other than meeting just over the noonhour. Since a compromise on the issue was never able to be reached other than the plan that entailed the end of the Retirement Committee itself by folding it into another committee, I do support the rule changes that are before us right now. I just want to say a few words on the record for future legislators to reflect upon as to why it is important to have and maintain a separate Retirement Committee involved in the retirement of public employees across the state. It's my understanding from reading past floor histories that the main reason the Retirement Committee was made a standing committee by itself in statute was because there was concern that senators might be influenced to reference retirement bills into committee where member groups may have had more influence, such as the Education Committee in regards to school retirement benefits or the Judiciary Committee for judge retirement benefits. By having a separate and independent committee focused solely on public employee retirement issues, the committee could work to maintain adequate retirement plans for each of the public employees group and to try to bring some uniformity and consistency among the pension plans. Although this has not been an easy task and current members of the Retirement Committee over the years have shown great endurance and stamina in discussing actuarial reports, assumptions regarding life expectancy, and an investment return analysis over the noonhour. Committee members have also shown a great commitment to bringing about an adequate standard of living retirement for state and county employees, local fire and police employees, state college and university employees, judges, State Patrol officers, and school employees. And I just personally wanted to thank the members of the Retirement

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Committee, those members who have served and sacrificed many noonhours to serve on that committee. I do support the rule change that is before us and it will bring back the composition of the Retirement Committee to six members. And for the record, I just want to mention that for those of you that will be remaining, there was some discussion about using a Wednesday committee hearing day for the five committee hearings...or, five committees that meet on a three-day basis. Out of those five committees, there will be four new chairmen. That's quite obvious since the present chairmen will not be returning. Also there will be a new chairman of the Appropriations Committee. That chairman of the Appropriations Committee also serves on the Retirement Committee. So that is also an issue that holding it over the noonhour does enable any members in the Legislature to serve on this committee. It was also suggested that possibly there could be an adjournment at 11:30 for the Retirement Committee to begin their proceedings and their hearings. I'm saying this so that it will be on the record for you of those that remain, that that might be an option or, as we stated, possibly on Wednesday taking a half an hour from those three-day committees and running from 12:00 until 2:00. So those are some options that you will be deciding in the future and I wish you luck in deciding that. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Stuhr. Senator Hudkins, there are no more lights on. I recognize you to close on your motion. Mr. Clerk, please read the motion before the body.

CLERK: Mr. President, the motion as offered by Senator Hudkins as Chair of the Rules Committee would propose an amendment to Rule 3, Sections 3 and 6.

SENATOR CUDABACK: This will require 30 votes, members. All in favor of the motion as stated by the Clerk vote aye; opposed, nay. Have you all voted on the motion who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 1 nay, Mr. President, on the adoption of the proposed rules change.

SENATOR CUDABACK: Motion was successful. We now go to the next

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agenda item, legislative resolution, LR 449. Mr. Clerk

CLERK: Mr. President, LR 449, proposing adopting articles of impeachment offered by Senators Chambers, Beutler, McDonald, Stuthman, and Thompson. The Nebraska Legislature, on behalf of the State of Nebraska v. C. David Hergert, Regent, University of Nebraska.

Legislative findings:

1) Legislature finds C. David Hergert is a civil officer of the state, and as such, is liable to impeachment for any misdemeanor in office. C. David Hergert was elected to the University of Nebraska Board of Regents on November 2, 2004, to represent District 7, and he continues to hold the office of University Regent.

2) The Legislature has the "sole power of impeachment by a majority of its members." Impeachment occurs by adoption of a Resolution adopting Articles of Impeachment. Trial occurs thereafter before the Nebraska Supreme Court.

3) Clear and convincing evidence exists to establish that C. David Hergert committed each and all of the impeachable offenses identified in the articles of impeachment in this resolution. Each of these offenses is an impeachable offense, because each is an offense "in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty by an act committed or omitted, or without violating a positive law by the abuse of discretionary powers for improper motives or for an improper purpose."

4) The integrity of democratic government in Nebraska rests upon honest and honorable obedience to Nebraska's election laws and other laws by candidates for office. The Legislature previously found and now reaffirms that "there is a compelling state interest in preserving the integrity of the electoral process in state elections by ensuring that these elections are free from corruption and the appearance of corruption and that

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this end can be achieved if...the sources of funding and the use of that funding in campaigns are fully disclosed."

5) The people of Nebraska have determined that only persons elected lawfully, following fair, legally conducted campaigns may serve as civil officers of this state. This determination is expressed in the state's constitution; it prescribes a mandatory oath of office which requires one who prevails in an election for the office of University Regent to swear or affirm that he or she has "not improperly influenced in any way the vote of any elector." This Legislature has an obligation in matters of impeachment to protect, defend, and preserve the credibility of this constitutional oath.

6) A constitutional officer is bound by the oath of office to comply with both federal and state law.

7) Candidates who are not incumbents seeking election as a civil officer owe the public the same duty to avoid corruption, illegality, and fraud as does an incumbent civil officer seeking reelection to the public office in Nebraska.

8) C. David Hergert may not be lawfully elected to office or serve after committing violations of Nebraska's election law so flagrant as to subvert fundamental and essential principles of government or be highly prejudicial to the public interest. To permit an official misdemeanant to hold office would improperly provide a model of behavior and conduct that would, if emulated by the university students or others, foster and encourage fraud, cheating, lying, plagiarism, false pretense, or other acts and omissions subversive of the daily educational processes and integrity of the university, and the laws of the state of Nebraska.

9) Clear and convincing evidence persuades the Legislature that C. David Hergert violated Nebraska's laws and did so by committing misdemeanors in office, including acts or omissions affecting his service as a University Regent. C. David Hergert's offending conduct is so inimical to his duties as to render him unfit to hold office. Clear and convincing evidence persuades the Legislature that C. David Hergert's acts and

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omissions, including violation of his oath of office, relate to his official duties because the people of Nebraska constitutionally prescribe that the governance of the University of Nebraska shall be vested in a Board of Regents elected from districts, in a manner prescribed by the Legislature. The Legislature prescribed that candidates for the office of University of Nebraska Regent must conduct their campaigns by complying with Nebraska's election and election accountability and disclosure laws.

10) Clear and convincing evidence persuades the Legislature that C. David Hergert's acts and conduct committed during and after the 2004 primary and general election campaigns for the office of University Regent involved official misconduct, false oaths, election fraud, false statements, false reports, and obstructions of government operations. As a result, Hergert's election is tainted. He entered office under false pretense, held office while continuing to commit more violations of law, and his conduct constitutes obstruction of the general governance of the university, and of the state of Nebraska.

11) Clear and convincing evidence persuades the Legislature that Hergert perpetrated his election campaign misconduct by filing a false, deceptive report with the commission on January 11, 2005, after he took the oath of office and became a University Regent. By so doing, he falsely reaffirmed his previous false, deceptive, untimely, and unlawful filings with the commission, and falsely reported more information. This official misconduct is inconsistent with the duty of a University Regent to obey the law, including election and accountability laws, while in office. It constitutes unlawful acts and violations of Nebraska Revised Statutes 28-924, 49-14,134, and 28-915.01, and obstructed operations of the Nebraska Accountability and Disclosure Commission and the state of Nebraska contrary to Nebraska Revised Statute 28-901.

12) Clear and convincing evidence persuades the Legislature that C. David Hergert used the United States Postal Service, or private or commercial interstate carriers, to transport false reports, affidavits, and submissions to the commission for the purpose of accomplishing a scheme or artifice to defraud the

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commission and the electors concerning Hergert's campaign and its finances, expenditures, and borrowings during the course of, and after the conclusion of, his 2004 primary and general election campaigns for the office of University Regent. These unlawful uses of the mail, or private or commercial interstate carriers, occurred during the primary and general election processes, and again after Hergert took office. These acts and omissions constitute violation of 18 USC, Sections 1341 and 1346, prohibiting the use of the mail to effectuate any scheme or artifice to defraud, including his artifices and schemes to abuse public records contrary to Nebraska Revised Statute 28-911, falsely report and conceal actual campaign loans and expenditures, and to commit election fraud contrary to Nebraska Revised Statutes 32-1601 and 49-1401.

13) Clear and convincing evidence persuades the Legislature that C. David Hergert knowingly and intentionally concealed, deceived and misrepresented material facts during his interview of October 8, 2005, conducted by Donald W. Kleine, Chief Prosecutor, Nebraska Attorney General's Office, and Lieutenant Mark Funkhouser, Nebraska State Patrol. By so doing, Hergert violated either or all of the following Nebraska statutes: Nebraska Revised Statutes 28-901, 28-907, and 28-924.

Acts constituting impeachable offenses on or after January 6, 2005:

Article I, False Oath of Office, as prescribed in Nebraska constitutional provision, Article XV, Section 1.

Article II, Mail Fraud, as laid out in Sections 18 USC 1341 and 1346.

Article III, False Reporting, as required by Nebraska Revised Statute 28-907.

Article IV, False Reporting, as required by Nebraska Revised Statute 28-907.

Article V, Obstructing Government Operations, pursuant to the provisions of Nebraska Revised Statute 28-901.

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Article VI, Obstructing Government Operations, pursuant to Nebraska Revised Statute 28-901.

Article VII, Violation of Campaign Finance Limitation Act, pursuant to the provisions of Nebraska Revised Statute 32-1604(5)(b).

Article VIII, Violation of Nebraska Political Accountability and Disclosure Act, consistent with the provisions of Section 49-14,134.

Article IX, Violation of Nebraska Political Accountability and Disclosure Act, pursuant to Section 49-1446.04.

Article X, Violation of Accountability and Disclosure Act, provision Nebraska Revised Statute 49-14,134.

NOW, THEREFORE, BE IT RESOLVED, that C. David Hergert, Regent, University of Nebraska is hereby impeached, saving unto the Legislature of the State of Nebraska at any time hereafter any further articles or other accusations or impeachment against said C. David Hergert, and also of replying to his answers which he shall make to the articles herein preferred against him, and of offering proof to the same and every part thereof, and all and every other article, accusation, or impeachment which shall be exhibited as the case shall require, and do now demand that C. David Hergert be put to answer the misdemeanor(s) in office herein charged against him, and that such proceedings, examination, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors and doctor of the day introduced.) On with discussion of LR 449. Senator Chambers, you're recognized to open first.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this matter will be conducted in accordance with our rules on any issue that comes before us, meaning that we each will have three opportunities to speak. Each opportunity embraces five minutes. If there is anybody who is willing and

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does not intend to speak himself or herself but will share some time, I would appreciate it. I will start by mentioning that a wealth of documentary evidence, information, and materials is available. I handed out some items, and as we present this matter we will highlight some of the more significant aspects of the case. But because you have that information or access to it, I'm going to give initially an overview and make myself available to answer any questions, to the extent that I can, about any aspect of the resolution, any article, any of the underlying evidence used to support these articles of impeachment. I had handed out a summary of the articles to make it kind of convenient, and then a copy of the articles themselves, so that precisely what we will be voting on will be before you. There was an interview I handed out, which was conducted by the State Patrol, of a Ms. Melanie Ruzicka, R-u-z-i-c-k-a, and she's the vice president of Valley Bank and Trust in Gering, Nebraska. I handed out a copy of the NSP report, at least an overview, so that you could see the synopsis and a summary, and that would make everything manageable, I hope; a copy of the detailed summary of Hergert's interview with the State Patrol and Don Kleine of the Attorney General's Office; the statement of Mr. Hergert's former treasurer, because he pointed out how he was a treasurer in name only--he relied on Mr. Hergert, trusted him that these documents were properly executed, and he merely signed what Mr. Hergert had filled out, and then forwarded it on to the Accountability and Disclosure Commission. Then from John Stinner, who is the president of Valley Bank and Trust in Gering, Nebraska, there is his testimony in that investigation conducted by the Nebraska State Patrol, and by the way, it was a criminal investigation undertaken by the Attorney General's Office. There is included with that what is known as a suspicious activity report. The bank has to file this with the FDIC whenever there is a transaction that may violate the law. So to protect himself, the fact that Mr. Hergert was a longtime customer and a stockholder did not give this president enough assurance to feel that this loan activity, which is touched on in detail in these documents, was legitimate, so he filed this document, saying that there may have been violation of campaign laws, and it did refer to Mr. Hergert as the suspect. Now near the beginning of this whole problem, the Legislature executed a resolution

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calling on Mr. Hergert to resign. At that time we did not have detailed information of his numerous, and in some cases repeated, violations of the law. Yet enough was made available to encourage an overwhelming number of the legislators to vote for that resolution calling for his resignation. It would indeed be ironic and difficult for the public to understand if the Legislature would officially call for his resignation, then fail to take action to remove him from office, since we had declared him to be unfit to hold it. We know there will be no prosecution, because the Accountability and Disclosure Commission entered a settlement, and as a part of it they promised no prosecution. The Executive Board received that resolution. It appointed a committee chaired by Senator Bourne, who is also Chair of the Judiciary Committee. Mr. Mock was retained as the attorney. His conclusion was that the Legislature ought not to impeach, and felt that the court would not convict Mr. Hergert, despite the numerous violations and the fact that one of them occurred undoubtedly after he had taken the oath of office. He had filed a false and misleading document. Mr. Mock's advice, his conclusions, were not accepted by a majority of the committee, which voted to refer a recommendation to the Executive Board, a recommendation that articles of impeachment be referred to the full Legislature. Mr. Mock had not covered certain issues or analyzed them, including violation of the oath, false statements made by Mr. Hergert to the State Patrol during the investigation, mail fraud, and concluded that it was no part of the duty and office of a Regent to obey the law. That was Mr. Mock's conclusion, which a majority of the committee did not accept. That recommendation from the committee was referred to the Exec Board, which appointed a four-person subcommittee with the charge of retaining a lawyer--his name is David Domina--and the charge was to draft articles of impeachment which would be brought before the Exec Board for ratification. That was done, and by a vote of 5 to 3, the Exec Board adopted the articles and they are signed, this resolution, by the five members who voted for impeachment. There are some items that I know I'm not going to have time to cover now, but I should make it clear that there is a lower standard of proof required to obtain a conviction before the Nebraska Supreme Court than was the case in the Douglas matter. So the next time I have an opportunity to

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speaking, I will distinguish--and I hope clearly enough so that it will be graspable--between evidence which proves a matter beyond a reasonable doubt, which proves a matter by clear and convincing evidence, which would prove a matter by a preponderance of the evidence, and the old standby probable cause, which could be considered very similar to preponderance of the evidence, but it is the lowest standard which exists, and that is the standard that the Legislature must adhere to in determining that Mr. Hergert will be impeached. All impeachment by the Legislature means is that we find probable cause to believe that one or more of these articles justifies presenting the matter to the Nebraska Supreme Court. The Court will conduct a trial. Mr. Hergert, unlike Paul Douglas in the first impeachment, will be compelled to appear and compelled to testify, and he cannot plead the Fifth. That is a significant change from what occurred when Paul Douglas was impeached several years ago. When the Legislature was presented with an opportunity to either...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...repeal or reaffirm the Accountability and Disclosure law, overwhelmingly, I would say, the Legislature voted to retain that law with some changes that would improve it, and the Hergert case was invoked along the way. So this is a matter which has loomed over the Legislature and various of its proceedings, and today we now have it presented directly to us, and under the constitution, we are the only body with the authority, and we have the duty, to carry out this impeachment. And the only way that a civil officer can be removed from office is by way of impeachment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. You've heard the opening on LR 449 by Senator Chambers. Open for discussion. Senator Beutler, followed by Senators Preister, Bourne, Connealy, Friend, Erdman, Flood, Schrock, Loudon, and Thompson. Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, what I would like to do with this first opportunity to speak is try to give you what I believe is the legal framework of this

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impeachment process, in terms of what the constitution says and what the arguments are on one side or the other, a little bit actually. But I have passed out two things to you. The first thing is the article in the constitution that is the cornerstone of the impeachment process. It says, "All civil officers of this state shall be liable to impeachment for any misdemeanor in office." There's no question but that we have a civil officer; there is no question but that we have a misdemeanor. But what is in question is the language in that little phrase, in that little sentence, that says "in office." There are two ways of looking at this, and you need to look at them in both of these two ways. Was it in office, understanding that to be a point-in-time test? He came into office on January 6. There were events that occurred before January 6, and there were acts that occurred after January 6, and with respect to the acts that were after January 6 while he was in office, the first six articles of impeachment apply to that point in time, to those acts that were after he was in office. The other four articles of impeachment apply to acts that occurred during the election process and related to the election process, but before he actually was in office. So if "point-in-time" were the only test and not mixed together with a second test that I'll tell you about, then you would have six articles, clearly okay by the constitution, and four that may be suspect. The second test that comes through in the Nebraska cases is, was it in office, in terms of related to the office? Not a time test, but was it related to the office? And in discussing that question, there are three distinct categories of relatedness that might be logically considered. The first category is the category of official action; that is, when Governor Butler, back in 1860-something stole money from the Treasury, that's a...you know, he had access in his official capacity, his official act. There's no doubt about that. Everything that is an official action is clearly impeachable. On the other end of the spectrum, the third category, are personal actions, things that are very personal in nature, don't relate to the office at all. The Douglas case, several other cases that are far more ancient, indicate that if it's in that category, it may not be related to the office. It is not related to the office. So you have that category over there, you have the official action category on the other side, and in the middle you have the third category,

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the election process.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Is the election process related more to official action and the office, or is the election process, violations in that area, more like a personal action, which wouldn't be subject to impeachment? Our courts have acted on two of those categories--the personal action, the official action. They have never acted on election violations, so it's a case of first impression. It's a case of first impression. You'll never know till you ask. Which way will they go? The law says that we should interpret the constitution broadly, so as to encompass the will of the people and capture the intent of the framers of the constitution. The law also says, and I quote, the terms and provisions...

SENATOR CUDABACK: Time, Senator Beutler. Next speaker, Senator Preister, followed by Senator Bourne and others.

SENATOR PREISTER: Thank you, Mr. President. I would yield my time to Senator Beutler.

SENATOR CUDABACK: Senator Beutler, almost five minutes.

SENATOR BEUTLER: Senator Preister, thank you very much. The law also says that the terms and provisions of the constitution are constantly expanded and enlarged by construction to meet the advancing affairs of man. That's Nebraska law. Well, what is the will of the people? What would be the will of the people in this situation, and the intent of the framers? The clear answer to me is given in the constitution itself, in the constitution itself. Article XV, Section 1 of our constitution recites the exact words of the oath. It's in the constitution, the exact words of the oath that is to be taken by every civil officer, including a member of the Board of Regents, and this is the touchstone that tells you which way that category of election law goes. I'd ask you to take a look at the oath. You have it in front of you. It's been passed out to you. It says, I, David Hergert, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the

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State of Nebraska, and will faithfully discharge the duties of Board of Regents, Seventh District according to the best of my ability. And that, by the way, stopping right there, is what the constitution said in 1860, before we changed it in 1875 to add language based on the experience of the state. And that language, by the way, is also the language in the United States Constitution, what I've read you so far. But here's the language that was added in 1875, which is so compelling to me: and that at the election at which I was chosen to fill said office, I have not improperly influenced in any way the vote of any elector. The oath of office itself connects the election process to the office. It's...how can you deny it? The people put into the constitution an oath of office that bound those two processes together. It looks backward; it's not like the U.S. Constitution. There are twin promises: the promise to discharge in office faithfully, and the promise that you have not improperly influenced the election, equally sacred promises, I would submit, inexorably tying together the office and the election process. And in the face of the language of the constitutional oath the court, in my opinion, must conclude that all ten articles of impeachment, all of which are related to the election process, are related, in fact, to the office, and are, therefore, in office. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Preister, did you wish to have any of your time back? He waives his time. Senator Bourne, followed by Senator Connealy.

SENATOR BOURNE: Thank you, Mr. President, members. Unless I hear new information today, I will be voting against the Chambers resolution. I have thought about this and I've thought about this and I've thought about this, and I've read volumes and volumes of information over the past several months, and I have concluded that the Supreme Court will not uphold a conviction of impeachment of Mr. Hergert. Let's step back for just a minute, and I would challenge you to find a more awesome power that the Legislature has than the power of impeachment. It is reserved for the most egregious cases of misconduct, because we, 25 of us, and then however many Supreme Court justices would vote for this, are basically taking away the ability of our citizens to vote for the person that they choose

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in that particular election. So I think that while we absolutely have the power to impeach as a Legislature, we need to be so cautious about what we are doing because we are, when it's all boiled down, taking away our citizens' right to vote, because we're saying that this individual's conduct is so egregious that we know better than you--however many thousand voters voted for this individual--we know better than you, 25 of us know better than you that he's not qualified to fit in that office. So I'm suggesting that we approach this cautiously, with extreme caution, actually. This is an awesome power that we have that we had better be careful about. So rarely is this used--seven individuals have been up on charges of impeachment in Nebraska, and only one in the 1900s, only one since 1900. Nationally, 16 individuals have been up for impeachment, nationally, since our constitution was adopted in the late 1700s, and of those 16, only 7 were actually convicted. The enormity of what we're facing here today cannot be underestimated. This is huge. This is a power that we have--yes, we have it. It's a power we have that should be used so rarely and in such dire circumstances. We need to be very, very careful about what we're doing. In my mind an impeachment is a complete act. This is where Senator Chambers and I differ. If we, in my opinion, impeach Mr. Hergert, knowing that the Supreme Court will not convict him, I believe we've impeached for political purposes. In my mind the purpose of impeachment is to cleanse the office, and if we don't feel that there's a conviction in the Supreme Court, we're doing it for political purposes. When we...when the Executive Board appointed the special committee, Senator Engel approached me, asked if I would be Chair. I was, frankly, reluctant to do it, but I felt that I had an obligation to the body to do it. I don't know Mr. Hergert, so I felt that I was impartial enough that I could do it, I guess, and do it well. The committee...I recommended to the committee that we hire an attorney. They gave me that ability. I researched, I consulted, I talked. I found an attorney who I still today have great confidence in, Clarence Mock. I asked him to prepare a brief for our committee, as if we were his client, advising us whether or not to go forward with litigation. And I have to think in...

SENATOR CUDABACK: One minute.

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SENATOR BOURNE: ...somewhat simpler terms than some of my colleagues, but that's how I asked him to approach this. I said, I want to know...I want you to research every case regarding impeachment in our area, and I want you to advise us whether or not we can obtain a conviction. Mr. Mock researched where our constitutional provisions regarding impeachment came from and then researched those states' case laws to determine whether or not there has ever been a jurisdiction that has said that impeachment can lie for acts occurring prior to the office, prior to the holding of the office. No such cases were found. I believe that the only things that can...that we can impeach an individual for are those things that were...that occurred after Mr. Hergert or any other candidate has raised their hand and sworn into the office. I don't believe you can extend conduct to any point other than that, after they're sworn in. You know, in my mind...I'm going to give you some other evidence of things that convince me.

SENATOR CUDABACK: Time, Senator Bourne. Thank you, Senator Bourne. Senator Connealy, followed by Senator Friend and others.

SENATOR CONNEALY: Thank you, Mr. President. I yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Connealy. Thank you, Mr. President. I'll just touch briefly on some of what Senator Bourne said. Several issues were not touched by Mr. Mock at all, so this is not a referendum on Mr. Mock. There are cases decided by the U.S. Supreme Court which are not unanimous, meaning that those judges do not see these issues eye to eye. So all we have to do is find probable cause that he committed an impeachable offense and turn it over to the court. Senator Bourne misperceives the nature of what it is we're doing. The impeaching is a legislative process. The Nebraska Supreme Court itself has said that the overall issue has been converted into a judicial proceeding, because the trial is conducted by the Nebraska Supreme Court, and what the Supreme Court does has

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nothing to do with the Legislature. So there are two distinct acts here involving two distinct branches of government. The Legislature charges and has the burden of proving, by clear and convincing evidence, at least one of the charges, and the court conducts a trial in accordance with judicial proceedings. Senator Bourne had talked about the most egregious of circumstances. When you have a man who has committed multiple violations of criminal laws, who ought to have been indicted and prosecuted criminally, except that he was granted immunity by an administrative agency, could not be more soiled. To stand on this floor and tell the public that when, either through admissions by Mr. Hergert, findings in an official criminal investigation of Mr. Hergert, or relying on unimpeachable documentary evidence that he violated the law repeatedly, but the Legislature thinks that such a person ought to stay in office because he is representing Nebraska's view of what an official, who is bound to be ethical, to manifest integrity, to be incorruptible, would be, if our students committed actions less egregious than this, they'd be out of the university. There is no way the university would say, as Senator Bourne is suggesting, that if a student is caught cheating, a professor has plagiarized, then if you tell them, yeah, you did this and you shouldn't do it again, but you keep your job; you tell the student, you should not have done this, but you keep the grade that you obtained through cheating and you remain a member of the university community in good standing. Why in the world are we going to let somebody tell us, and we accept it or be expected to accept it, that a person who violated the criminal law, committed fraud in seeking an office, is going to be allowed to escape the consequences of his actions and the Legislature not present this abundance of law violations to the court? That is something I cannot agree with. Senator Bourne acknowledged something that Mr. Mock did not touch at all, but I have emphasized it, that the purpose of impeachment is to cleanse the office by removing an unfit person. Even when he is removed,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...as I believe he will be, it is not a punishment. There is no fine; there's no incarceration, but a

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penalty which says he cannot hold public office in this state again. That is our duty, that is our responsibility, and if we would say, by letting Mr. Hergert go, that this kind of conduct is acceptable to the Legislature, we should not allow a student who is caught cheating be expelled from the university again. Or somebody who lies in obtaining benefits from the state should not be prosecuted or sanctioned in any way. That is something I cannot accept. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Friend.

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. My only claim to fame, probably, in life, or one of my biggest ones: when I was a kid, I lived in East St. Paul, Minnesota; a guy lived about three blocks away--his name was Herb Brooks. He didn't know who I was, but I'm sure a lot of you have heard of him. Herb Brooks was the coach of the 1980 Olympic team that beat the Russians and then won the gold medal. And I'm always fascinated...I was fascinated by his life. And one of the things that's either an urban legend or it's real, that he said to his team before the game against the Soviet Union, was that great moments are born from great opportunity. And of course, they were ready to charge out the wall, and it was very inspirational. What happened last night wasn't great, what's happening today is not great, but they are significant moments. And I would amend what Herb Brooks said: Significant moments are born from significant opportunity. And I think we have an opportunity here. Senator Chambers spoke volumes earlier in regard to us being the only body able to handle things like this, to deal with things like this. That's appropriate. He's right. And I'm going to go out on a limb. I love this legislative body, I love the challenge, I love the work that I do here, but this is a flawed form of legislative government. A unicameral is a flawed form of legislative government, and this is proof of that. Here's what we have here in front of us today. The oldest justification for a bicameral legislature, by the way...and this pertinent to what we're dealing with. Bear with me. The oldest justification for a bicameral legislature is provide for second thoughts about legislation or anything else that we're doing. That holds true today. That's the strongest argument today for it, because it's

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all redundant representation--a house and a senate all have that. Throughout this nation it's redundant representation. Here's where we're at; here's what we have in front of us today, for speed purposes. A person who violated campaign finance laws has been punished under the provisions of that law for those violations. A special independent council appointed provides an opinion that, for lack of a better term right now, exudes an idea that, hey, this guy violated the law, he didn't do it in office, he's been punished; now I understand your concern, but you have to let it go, or you should let it go. A legislature possibly acting today to ostensibly overturn the vote of the people cuts to the heart of this debate, that I'm going to bring up, not just this year, not just touch on it, it's coming up in the future, of the unicameral and bicameralism. It's...this is a political issue. A few years ago President Bill Clinton was impeached by one house of our legislative...one branch...one house of a branch of our legislative government. President Clinton lied under oath; the House brings impeachment papers, passes those on to the Senate. The Senate looks at them, tries that case, and votes against that recommendation. And the Supreme Court, for all intents and purposes, was an unelected body, by the way--we all know that--is spared a political and vitriolic partisan issue. And we know that's what it is. Whether we believe President Clinton should have been ousted out of office or not, it was political, it was vitriolic, and...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...that's what happened, and it was the right answer. They came up with the right answer. The system worked. Last night the system did not work. The system isn't going to work again on Thursday, because we're going to pass that bill, and if we impeach this person, who I've never met, it is arguable that the system has failed us again, that we have not provided the sufficient checks and balances that we need to do the job that we have to do. This impeachment is a tool of the Unicameral, but it is a hammer drill into drywall, empty drywall. Thirty votes, a supermajority; thirty-three votes, even better, to provide the type of check, the provide the type of balance that a unicameral, the only one in this nation, can have to prevent a miscarriage of justice. Now...

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SENATOR CUDABACK: Time, Senator Friend.

SENATOR FRIEND: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Friend. Senator Erdman, followed by Senator Flood and others.

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I have...let me start here. We had a process before us last year in LR 98. As a member of the Executive Board I had the opportunity to sit and to determine what the process would be for that hearing. We invited folks to the table; some came, some did not. We had the discussion in the Executive Board. The Executive Board voted to advance LR 98 to the floor of the Legislature, so that we may all discuss it. After the discussion on the floor, it became clear that it was not appropriate at that time to say that the end result is impeachment. And so therefore, Senator Bourne stood up and said, I've got a little different idea; let's step back, let's create an opportunity for us to pursue our options. And to that I would say to Senator Bourne and to those that served on the LR 98 subcommittee or special committee, but specifically to Senator Bourne, that I have appreciated the way that he has handled the business of the committee, because this is a volatile issue, this is a difficult issue. And as an individual that voted in favor of LR 98 and voted in favor of the Legislature pursuing our options, I was glad to see that we had the people, specifically Senator Bourne as the Chairman, to be able to wade through this process and to come up with an effective and appropriate analysis of our process and what our options are. Now, we're going to disagree probably in this body about what the analysis is and what our options are, but let's be clear about what is before us. And I'll take you back to the debate on the floor from June 2, 2005, on LR 98, and these eloquent words are from the senior member, Senator Chambers. What is the purpose of impeachment? Not to punish. It is a judicial process now. I've been interested to follow the reporting on this process. Recently, there was an article written in one of the papers in the state that said that there may be individuals in the Legislature willing to support a

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resolution of impeachment because it would suspend the officeholder from his duties or her duties until the Supreme Court would take up the case and resolve the issue, whether conviction or acquittal. In the words of the senior member, the purpose of impeachment is not to punish. And I am in a similar position of Senator Bourne, that in the event that we can only prove the preponderance of evidence to ourselves--and that's the standard we hold, but the standard that the Supreme Court is going to hold us to is clear and convincing--then we ought go forward unless we believe that there is clear and convincing evidence, as a body, that he will be convicted, because otherwise, it is a punishment, as I would read the process. The other interesting part about this is that when I voted for LR 98, I was sincere. I was sincere that we should have an analysis of what our options are. And we hired an attorney, tens of thousands of dollars have been paid to that individual for his services, but we also have capable legal minds in this legislative body. Senator Beutler, Senator Chambers, and others have a different opinion, and now Senator Flood. So we are going to disagree, because in the world of law it doesn't matter which opinion is correct--it's which opinion the court will rule in favor of, and the right interpretation carries the day. But let me take you back again to last year's debate, June 2, 2005, LR 98. This is from the principal introducer of LR 98, Senator Schrock: I think we should rely on our own counsel to get the best information possible, and that is all the second part of the resolution proposes to do, so the matter of our options can be pursued...

SENATOR CULMBACK: One minute.

SENATOR ERDMAN: ...in a thoughtful and prudent way. And regardless of the outcome, I would argue that we are doing that. Senator Chambers and Senator Beutler will argue that the legal counsel's opinion is flawed or is not accurate, or does not adequately encompass all aspects that should be considered. Additionally, Senator Schrock went on to say, LR 98, it says we should investigate that. And I'll continue on. And if the Exec Board or whoever, the council decides it's not a fair option, fine. Members of the Legislature, I voted for LR 98 because I wanted an objective process. I can only speak for myself. I do

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not try...I'm not here to convince you one way or another. I honestly don't believe we're going to change anyone's opinion at this point. I think we're building a record, and I think that's appropriate because this is going to be a judicial proceeding, and that is appropriate. But as I sit back and I look at the information, the 505 pages of the report, Senator Chambers...

SENATOR CUDABACK: Time, Senator Erdman.

SENATOR ERDMAN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Flood, followed by Senator Schrock and at least 20 others.

SENATOR FLOOD: Thank you, Mr. President and members. The first thing I want to address is the gravity with which this very issue before us today has and should have for all of us. This is a very solemn decision, and I, quite frankly, take exception to the statements that may be made or maybe have already been made that we are doing this lightly. When I received Senator Chambers' memo in late August, I read it cover to cover. I read it and I researched it. Middle of September, I spent three nights in my basement reading through cases, checking his cases, checking his cites, and I drafted my own 15-page brief to counter what Senator Chambers had asserted in his, that we could impeach someone for acts prior to taking office. And in my brief, which I believe all of you have a copy, on page 2 I said, the Chambers treatise addresses several legal issues pertaining to the authority of the Legislature to impeach Hergert under Article IV, Section 5 of our constitution. Chambers clearly makes his case that misdemeanor in office includes nonindictable conduct. I reluctantly also served on the LR 98 Hergert committee. I looked at the State Patrol report, I looked at the law, and at the end of the day I read Mr. Mock's brief. And I appreciate what Mr. Mock did. In fact, his brief helped me make my decision. I didn't ask Mr. Mock to spoon-feed me. I asked him to give me his analysis of the law so that I could look at it and make my own decision, and I did that. On page 24 of Mr. Mock's brief, he makes the case and he says that the evidence is at least clear and convincing that Hergert knew the information was false at the time he filed his January 11, 2005,

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report. I had been saying all along that if he broke the law when he was in office, that is something to seriously consider. I went back to the Nebraska Constitution and in Article XVII of Section 3 it says, no person shall be convicted without the concurrence of two-thirds of the members of the court of impeachment that clear and convincing evidence exists, indicating that such person is guilty of one or more of the impeachable offense. Knowing that beyond a reasonable doubt is the highest standard, preponderance of the evidence is one of the lowest standards, and clear and convincing was somewhere in the middle, and that the Legislature had consciously reduced that burden from beyond a reasonable doubt to clear and convincing in the mid eighties, following the Douglas fiasco, and our attorney says that there's enough evidence to meet that burden, I made the decision to vote to recommend impeachment. On page 25 of Mr. Mock's brief he states in a two-part test what it takes to convict somebody in the Supreme Court of impeachment. Part one, we've got that, with Mr. Mock's assertion that we have an impeachable offense here that was committed during office. Part two, was the offense related to the duties of the office? And this is where I had to do some thinking on my own, and take what Mr. Mock gave us and do a little analysis myself. Here we have a government actor that, according to Mr. Clarence Mock, our attorney, has met the burden of clear and convincing evidence for intentionally, knowingly filing a false, fraudulent report. Should we have civil/state actors that we elect to represent us as constitutional officers intentionally filing false reports? And Mr. Mock makes mention of this, that two courts in the state of Massachusetts have ruled, and you'll find this on page 37 and 38,...

SENATOR CUDABACK: One minute.

SENATOR FLOOD: that if it involves dishonest and felonious conduct knowingly committed by the defendant, that it's worth impeachment. The other case is found on page 38, and in the interest of time, I'll be brief and I'll quickly summarize. I did my own analysis. I used what Mr. Mock gave us as a brief, and I appreciate his work. It took me a long way down the road to making a decision. This is a serious decision, but it goes to the crime of honesty. If I am guilty of a felony involving a

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crime of dishonesty, I can't serve in this Chamber. Mr. Mock (sic) committed a felony, although he was not charged. But nonindictable conduct does...can relate to an article of impeachment. And before I end my time here, I want to address Senator Friend's comments about the Unicameral. I would rather have the Supreme Court deciding a case like this, where the rules of evidence apply, where Mr. Herbert has constitutional protections and the right to counsel, right in front of the Nebraska Supreme Court, with justices that are at the top of their legal profession, and this is what they do every day. They make decisions about what the law says. I don't like this political process, either, and I've tried to treat this as a lawyer.

SENATOR CUDABACK: Time, Senator Flood.

SENATOR FLOOD: Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Senator Schrock, followed by Senator Louden and others.

SENATOR SCHROCK: Mr. President, members of the body, I take a more simplistic view of this. A question today is, are we going to impeach or not impeach? I don't know the answer to that yet. The question for the Supreme Court, if we do impeach, are they going to convict or not convict? I don't know the answer to that. I do know, though, we have a lot of evidence in this case, and I think integrity is in issue that should be talked about here today. Mr. Hergert said he was not going to abide by the campaign finance laws. That's a decision we all make. I'm fine with that, but I think that puts a higher standard for him to report properly. Anybody disagree with that? If you say you're not going to abide by the campaign finance law, you ought not to do actions that cause harm to your opponent and harm to the process. I think that created a much higher standard for Mr. Hergert, and he failed. He failed miserably. This is about an election process, this is about our laws. I think all of us in here try to obey the laws. I'm proud of the 37 senators who signed that resolution asking Mr. Hergert to resign. I think that says volumes about this body. We say it is not proper to violate our laws and hold office. And when you talk about

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integrity, I asked a college professor, what happens when you find a student who has cheated in your class? He said, he gets a failing grade and is dismissed from class. You ask any college student if they think a member of the Board of Regents should be serving after cheating, after filing a false statement. I can tell you what 95 percent of them will say. This is about integrity for the university. I feel sorry for the university, having a man of this credentials serve on their Board of Regents, the governing body who makes rules that our students have to live by. I'm passionate about that. You should be one of the higher moral standard persons if you're going to be on the Board of Regents, and that doesn't give you the right to tramp all over our campaign laws. I just think it's a sham if we don't do something about this. Hey, I'll live with it either way, but I think it's about integrity. And by the way, I'm proud to serve in a body of 49 people, and Mr. Friend, I cast the toughest vote of my life last year on a school bill, so you're not alone. We have checks and balances, and if Mr. Hergert is not guilty, then the Supreme Court can decide that. But for us not to know the answer to this would always haunt me for the rest of my life. Senator Flood, would you like any more time?

SENATOR CUDABACK: Senator...thank you, Senator Schrock.
Senator Louden, followed by Senator Thompson.

SENATOR LOUDEN: Thank you, members. I...as one of the three that voted not to bring this forward as impeachment, I certainly want to state my position on that. As we was on that task force, it was agreed that we would hire a counsel that we thought would be appropriate, and Senator Bourne certainly picked a very good one, as far as I know. I personally don't know Clarence Mock, but he came as quite a reputable lawyer, and so I went with what he would decide in his opinion. As we went through that and he finally rendered his opinion, we paid several thousand dollars to have him research the matter, and in the business that I've always been in--I'm not a lawyer, but whenever I need to have law work done or mechanics or anything else, we usually hire competent people or have competent people do it for us, and we trust in what they do. So myself, when Clarence Mock stated that he didn't think that the Supreme Court

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would find this as an impeachable offense, I went along with his finding and was confident in my decision. I think he did a splendid job in bringing it forwards. I've read his brief many times. I read Senator Chambers' brief. I read Senator Flood's brief. We got those off and on through the summer, and yes, I did read Senator Chambers' brief from...complete of it, the whole 49 pages, or whatever it was, and Senator Flood's. And this is something, as a layperson that does not work the law books as they do, I found it quite interesting, but I also know that if you have one lawyer in a town that he'll starve to death, but if you have two, why, they'll both get fabulously rich, usually. And this was my opinion that it was different lawyers' opinions, so I had to decide which lawyer's opinion I wanted to follow. Same way when we had our task force meetings. There was Senator Beutler and Senator Chambers usually led the discussion, and of course they are both competent law people, having done that most all their life, and as far as I know, that's probably their major walk in life was to do law books. So there again, we had to follow what they did, and I know that any good lawyer will find reasons to back up their case and strengthen his case. If they don't do that, they're not a good lawyer. So I had to take that into consideration on what they were doing. One of the things that I notice that Senator Beutler has mentioned, this oath of office here, and he mentioned that "I have not improperly influenced in any way the vote of any elector." Where you been all your life? This is what campaigning is all about. Two years ago we saw Curt Bromm's reputation get tore to shreds, and if that wasn't trying to influence the voters, I would like to know what was. So to me, that really doesn't make that much...carry that much weight. I think that something like that is what it's all about, and I think with the...Senator Chambers has mentioned, and I think some of it he's complained about the judge that threw the court case out, or the grand jury. Somewhere along the line...

SENATOR CUDABACK: One minute.

SENATOR LOUDEN: ...some people made a mistake. The grand jury wasn't done right, and the Attorney General, Jon Bruning, and his staff were advised on what the Accountability Commission were doing. So we've all been around politics enough to know

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that if this was a slam dunk case, I'm sure Attorney General Bruning would have went ahead and prosecuted the case. The deal was he wasn't sure, so I'm sure he pushed it off onto a grand jury, and now the thing has ended up down here in our lap. And as far as the Regents and the honesty in the Regents and the honesty with the university, I can say we have our Drew Miller case here. The other day we had students from the university here, and of course they advocated that we should impeach Hergert, and I asked two of the students, well, what should we do about Drew Miller, and they didn't even know what I was talking about. So...

SENATOR CUDABACK: Time.

SENATOR LOUDEN: ...we have to be very careful about what we talk about, where honesty has to be.

SENATOR CUDABACK: Time, Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Louden. (Visitors introduced.) On with discussion. Senator Thompson, followed by Senator Chambers.

SENATOR THOMPSON: Thank you, Mr. President. I was one of the nonlawyers on the committee, and I know that other members of that committee also stated what I'm going to state, and I just can't tell you how impressed and proud and grateful I was to have four lawyers from the body serving on that committee, and you've heard some of the excellent arguments that they have made this morning; also, the help that we also had from an outside attorney. Senator Louden, I kind of have a difference of opinion on this. I weighed what they all said, and in the end was one of the people who voted to move it forward. And I don't think I have much to add to the discussion other than my support for the this, because I do believe this is about integrity and it is about a standard that we have that we have to uphold as a Legislature. It is our duty. Clarence Mock--and I know this has already been touched on--was given the charge to advise us as a client. There was a lot of really good information in

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there, and sometimes advice as a client is a little different, I think, than advice you would be giving as the standard that we need to uphold here. Maybe we won't win at the Supreme Court level, if you want to call it a win, or maybe it won't be coming out the way that we would see it. But I think it's our duty...is not to decide this based on what the outcome is; it's what right in terms of the people and the standards that we want to hold for our elected officials and how they get that. And with that, I would like to yield my time to Senator Beutler.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Thompson, thank you. Let me just go back to a couple of matters. First of all, one can only agree wholeheartedly with the fact that this is not something taking...reacting to an election situation is not something one should do lightly. But nor have we done it lightly. Mr. Hergert says we're taking the election away from the people, but remember, the first thing we did was a resolution, LR 98, in asking the Regent to resign, and we talked about the fact that if he resigned, we've give the election back to the people. There's a special election called, Mr. Hergert can run. He can go and face the people, and in light of the revelations, try to convince them that he should be elected, nonetheless. But he rejected going back to the people. We didn't reject going back to the people. We suggested that by the process that we used. He rejected it. But when you talk about taking away the right of the people to a fair election, isn't that word "fair" important? Who took away the right of the people to a fair election? Mr. Hergert did, by violating the campaign finance laws. He's the one that has been disrespectful of the people of the 7th District, and the people of the 7th District know it. The one and only scientific poll that's been done in the 7th District since this has happened, 66 percent of the people feel that if he does not resign, he should be removed. Those are just the voters of the 7th District, and that is completely contrary to what Mr. Hergert is saying and putting out there all the time--well, I think they support me; well--that's not the fact. That's not the scientific fact. So I can't...

SENATOR CUDABACK: One minute.

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SENATOR BEUTLER: ...imagine at what level of egregiousness we finally act, but I suggest that there is no solution to this problem, given the scale of the violations and the intentionality of the violations, which we now know from the State Patrol investigation...we know these acts were intentional, and I'll go into that later, to give you a flavor for that. But given the intentionality and given the scale of the violations, it doesn't solve the problem to say he was fined \$33,000, because to a millionaire, another \$33,000 of campaign expense is nothing. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Thompson. Further discussion? Senator Chambers, followed by Senator Engel.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Dave Hergert is a liar. We all know that. If anybody on this floor had a business, and a person who applied for a job lied, time after time after time, would you hire that person? Or if you had foolishly hired the person, not aware that he or she had lied, would you retain that person? What kind of nonsense are these senators talking about, when they say a man, who not only lied but violated the criminal law, violated a law which is a felony, should be endorsed by this Legislature and not presented to the court? I handed you all an article where Dave Hergert went on the radio and lied about not being given the opportunity by the Legislature to present his case. He got a letter inviting him to appear before the only instrumentality looking at his case, a committee of the Legislature, and he chose not to come. He didn't have to come, but he should not have lied about not having been invited. His own treasurer said--this is from a summary of his testimony--Jacobson stated he relied on Hergert to handle the finances of the campaign, due to Hergert's previous involvement in a congressional or senate campaign. Jacobson advised he relied on Hergert to play by the rules and do things right. Jacobson stated he had no way of knowing whether the campaign finances were being handled properly. Jacobson advised he did not review the Candidate Committee Treasurer's Guide or any other literature regarding the responsibilities of the campaign treasurer. Jacobson stated he

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had no idea there were any problems with the campaign reporting until the day after the election, when he received a phone call at his residence from a reporter with the Daily Nebraskan. Jacobson advised that after he ended the conversation with the reporter, he contacted Hergert at his residence. Jacobson stated that he informed Hergert of these problems. Hergert indicated to this man that it was just a matter of a disagreement, a breakdown in communication. There was nothing serious, and it would all be taken care of and go away. Hergert lied to his own treasurer. And Senator Friend and some of these others, who pose as being so self-righteous and concerned about politics, are saying we, knowing from the documentary evidence and words out of this man's own mouth that he is a liar, should let him keep that position and not turn it over to the court. Do you know why the people decided to make this a judicial proceeding, even when they had two houses, where the house could indict or impeach, and the senate could try it? Because the people wanted it to be a judicial process, and all we do is turn it over to the court. If Senator Loudon and these others, who want to hide behind the opinion of one lawyer...and Senator Bourne knows better. You all wouldn't be getting expenses now, if I took that position. The Attorney General said that under the constitution, senators could not be given expenses. I do not suspend my judgment just because somebody trained in the law, as I am, takes a position and I disagree with it. I follow my judgment. I pushed until that case went before the Nebraska Supreme Court, and the court said, Ernie's right, the Attorney General is wrong, and as a result, you all get an expense check every month while you're here. Should I have followed what a lawyer said? You all have some other agenda in mind, but I'm looking at the integrity of the Legislature and what it is that our responsibility is.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Was a vote taken away from the people? Absolutely not. How does any constitutional officer get into office? Through election. Why, then, does the constitution say that the only way you can remove one is through impeachment? The constitution tells us that when one of these people gets into office through election or even appointment, we are to

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impeach and the court is to convict. Dave Domina is a highly respected lawyer, and he and I have had extensive conversations, and he believes each one of these articles can be proved by a higher standard than we're required to meet. The standard is clear and convincing. He feels that from the documentation, the witnesses, and the testimony that Hergert himself will have to give, that the standard of beyond a reasonable doubt can be reached, and I believe that Mr. Domina is correct, and I'm going to vote in good conscience for impeachment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Mr. Clerk, items for the record, please.

CLERK: Mr. President, the bills read on Final Reading this morning were presented to the Governor at 10:52 a.m. (re LB 1199, LB 1199A, LB 1222, LB 1222A, LB 1226, LB 1226A, LB 57, LB 79, and LB 1148.) The constitutional amendment as set forth in LR 274CA was presented to the Secretary of State at 10:50 a.m. I have a new resolution: Senator Foley would offer LR 453; that will be laid over. (Legislative Journal page 1627.)

Mr. President, priority motion. Senator Brown would move to recess until 1:30 p.m.

SENATOR CUDABACK: You've heard the motion to recess. All in favor of that motion say aye. Opposed, nay. The ayes have it. We are recessed.

RECESS

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good afternoon. Welcome to the George W. Norris Legislative Chamber. Senators, the afternoon session is about to reconvene. Please record your presence. Record please, Mr. Clerk.

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CLERK: I have a quorum present, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Mr. Clerk, please inform the body where we were when we recessed for lunch.

CLERK: The Legislature was discussing LR 449, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. We will now continue. There are a number of lights on, about 20, as a matter of fact. The first five are Senators Engel, Mines, Jensen, Preister, and Beutler. Senator Engel.

SENATOR ENGEL: Mr. President, members of the body, from the beginning I have never voted for impeachment, and I mentioned it before but I wanted to explain again why. I know, as a layperson and not a legal person, in reading the constitution, it says misdemeanors and so forth while in office or the duties of an office. And that's the way I interpret it, as a layman, that that's where we were. Then we hired...of course, as Senator Bourne mentioned, we did appoint a committee headed up by Senator Bourne, a very capable leader, and a good committee across the whole state, and they hired a very capable attorney, Clarence Mock, a very...with a very good reputation. And he studied everything, he took everything into account, came back with his recommendations. And while he mentioned here none of Hergert's conduct occurring before Hergert assumed the duties of Regent could form the basis for an impeachable offense because the conduct was not related to the duties of the a Regent. And it says: Similarly, while his January 11, 2005, campaign statement may also have violated both Nebraska civil and criminal law, Hergert's filing of this campaign statement was not an act directly pertaining to or connected with his office and, therefore, the Nebraska Supreme Court would most probably find it was not related to the duties. As such, the conduct would not constitute a misdemeanor in office--the necessary requirement for impeachment. Under the particular circumstances of this case, the Legislature is specifically constrained by our constitution. The responsibility of prosecuting and furnishing...punishing Hergert resides with appropriate office within the executive branch. So that is why I did not support the impeachment all along the line, and I still do not because

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of that. And I know attorneys, if there's...if someone is charged with this offense, well, he'll have an attorney to prove he's innocent. There will be another attorney to prove he's guilty. So I know attorneys do that. They take whatever side they happen to be on, to defend or prosecute, and that is beyond my purview, of course, because I am not an attorney. So I can understand why some of the attorneys are certainly disagreeing with what I think, as a layperson. But the thing is, I do not believe, with what...the information that we have up to this point, that this is an impeachable offense. We spent \$29,246.65 to find out that...from...that's what we paid Mr. Mock for his advice that we did not pay any attention to. And from the beginning, from the beginning, when this first started, there was mention that no matter what we do, whether we come up with this...the right...this conclusion to impeach or not to impeach, it will still be brought before the floor, and I...Senator Chambers mentioned that, and at that point in time I said, why are we going through all these motions then if it's going to come out anyhow? Well, I guess there's a good reason for it, because we do have, supposedly, more facts. And so...and then when this opinion came back from Mr. Mock, there's a couple of people that didn't agree with that opinion. So, therefore, that's why Mr. Mock is no longer part of this procedure. And we did pay him and he is off the case. So they have drawn up then...we appointed a committee to draw up the Articles of Impeachment. That was voted on in Executive Committee and, of course, I didn't vote for that either because of what I've already told you. And now we have...and they have...we signed a contract with David Domina to take this case on if they get the 25 votes today. And I am not going to vote for it today, and if we don't get the 25 votes, well, then, as far as I know, way I understand it, it's over. So...

SENATOR CUDABACK: One minute.

SENATOR ENGEL: ...with that, I'd turn the rest of my time over very quickly to Senator Bourne, what I have left. Thank you very much.

SENATOR CUDABACK: Senator Bourne, one minute.

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SENATOR BOURNE: Thank you, Mr. President. Thank you, Senator Engel. In this minute, I...actually, I wanted to respond to Senator Flood's comments, because his legal opinion is one that I respect greatly, and I would suggest to Senator Flood that he's close but not right on. And he had said that his brief focused on whether or not conduct that occurred prior to him swearing in could be considered impeachable, and I wanted to point out to Senator Flood that the report was signed prior to Mr. Hergert swearing into the office, and the report could have been submitted prior to the swearing in. And I just want to point that out. And then I'm going through, the next time I speak, I'm going to go through the prongs, the elements, that must be proved up to impeach somebody. The last component that I think Senator Flood needs to concentrate on is that the malfeasance, the improper act, must relate to the duties...

SENATOR CUDABACK: Time, Senator.

SENATOR BOURNE: ...of the office.

SENATOR CUDABACK: Thank you, Senator Engel and Senator Bourne. (Visitors introduced.) On with discussion of LR 449. Senator Mines, followed by Senator Jensen.

SENATOR MINES: Thank you, Mr. President. Colleagues, I don't know Mr. Hergert. I think I shook his hand one time at some reception. I don't know him, but what I do know about him, he is...he has shamed and disgraced himself. Mr. Hergert has shamed and disgraced his supporters. He has shamed and disgraced the University of Nebraska, and he shamed and disgraced our state. He's impaired his ability to represent the 7th District on the University of Nebraska's Board of Regents. Clarence Mock, who wrote the opinion, and I did read the opinion, Clarence Mock agrees. And if you look in his conclusion, Mr. Mock says that Hergert's reprehensible conduct cannot be excused as merely negligent and, instead, appears to have violated both Nebraska civil and criminal law. However, Mr. Mock says the Nebraska Supreme Court would ultimately hold Hergert has not committed an impeachable offense. The shame he's brought on himself is not an impeachable offense. Mr. Mock has been a friend for 30 years. I met with Mr. Mock and we

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talked about this, and according to his opinion, Mr. Hergert is...hasn't played fair, but it's not impeachable, and I hold his opinion in great stead. Having said that, there's one element that I, as a layperson, am unsure about. I mean, all the other articles I can pick one side or the other. I'm unsure about what happened on January 11 and how that relates to the Articles of Impeachment. And I've asked, off mike, I've asked Senator Beutler if he would talk about this. Mr. President, could I have Senator Beutler yield, please?

SENATOR CUDABACK: Senator Beutler, would you yield to a question?

SENATOR BEUTLER: Yes.

SENATOR MINES: Senator Beutler, also in Mr. Mock's opinion, in his conclusion, as a matter of fact, he says: Similarly, while his, meaning Hergert's, January 11 campaign statement may also have violated both Nebraska civil and criminal law, Hergert's filing of this campaign statement was not an act directly pertaining to or connected with his office. I need an opinion from you as to why we...this is an impeachable offense. This is the linchpin to my decision. January 11 he was in office. How is this an impeachable offense? Mr. Mock said it's not.

SENATOR BEUTLER: Senator, let me go back on the facts a little bit so that I'm be sure...being sure that I understand the situation and we all understand the situation. But Mr. Hergert had some opponent research done and, as you and I and everybody in this room knows, opponent research is done very early in a campaign because you need that information first before you do everything...decide to do everything else that you do. And there is information indicating that that process of gathering information by the Jackson-Alvarez Group began in the summer before the fall election, and went on through the fall election and certainly had been going on for a long, long time before the October 18 reporting date, when he should have reported those expenditures. But, in fact, he reported those expenditures way after the election, on December 14. That report, when he filed it, was intended to be misleading. It was filed while he was in office and, pursuant to the arguments that I had made to you

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earlier, it would seem to be adequately related to the office.

SENATOR CUDABACK: One minute.

SENATOR MINES: And the question, Senator Beutler, that Mr. Mock raised is, it may not be related...directly related to his duties. Is that arguable?

SENATOR BEUTLER: Senator, I think it's arguable, but I think it's clearly the weaker argument.

SENATOR MINES: Okay. Mr. President, thank you. I will yield my time to Senator Beutler, if he'd like more.

SENATOR BEUTLER: Sure, if it's available. Thank you, Senator Mines. I'm not sure what people want to hear or need to hear at this point. I don't want to go on with respect to things that are not of interest to you or not a part of your decision-making process, but let me emphasize to you again how manipulative this man was with the election process. I mean, this...after the State Patrol report came out, neither Mock, nor the State Patrol people, nor anybody that's looked at this in any detail, will say anything...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...other than this was a constructed scheme to manipulate the election process. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Mines. Further discussion? Senator Jensen, followed by Senator Preister, Beutler, Stuthman, and Langemeier. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. Senator Janssen and I were wondering which is which here, but I'll speak. And, Senator Bourne, I wonder if I might have a conversation with you. I come at this from kind of a simple approach, and I really do believe, in the reading I've done, particularly in Founding Fathers and some of that, is that voters' rights are very, very important. It's one of the things that I believe our founding fathers and even in our constitution stands for. And I

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do have a problem even with our term limits because I think we're taking the rights of our voters away from voting for the people that they want.

SENATOR BOURNE: I agree.

SENATOR JENSEN: Do you feel that in this Hergert situation that if we were to impeach, are we taking the rights of the voters of that district away from them through this process?

SENATOR BOURNE: I think it's clear that we are taking that right away, however, the constitution does give us that right. And subsequent case law has set out that it should be reserved for the most egregious offenses. So, yes, we are taking that right, we have the power to do that, but the case law has settled that it is supposed to be extremely rare.

SENATOR JENSEN: Well, thank you for that. And it would certainly seem to me that that is of great concern. You know, certainly I hear, we all hear about, why do people vote for a certain senator, whoever that might be. And I certainly try to explain to them that each of us represent 35,000 people, give or take a few, and they have a right to vote for us, and we do not have a right to tell them who they should vote for or who they should not. That's up to the constituents. I do feel that in this situation that there are those individuals who voted for Hergert that, through this process, we would be taking that right away from them. That bothers me somewhat. Also, yes, in my lifetime I imagine I have voted for somebody--well, I know I have--once or twice that if I...I wish I could have taken that vote back because the individual did not go along or at least vote the way I thought that he should have voted. And we probably have a lot of those today questioning us here. But I do feel that that is a right, that every individual has been given a constitutional right, and so to remove that does concern me. Senator Bourne, would you like any more time? I'd render the rest of my time to Senator Bourne.

SENATOR CUDABACK: Senator Bourne, about 2, 10.

SENATOR BOURNE: Thank you. I'm having a Page print off the

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page 25 of the Mock report. And, Michaela, if I could have page 25 of the Mock report. I want to kind of refocus the debate on what the standard is for impeachment. And a lot of us are angry at what Regent Hergert did, and probably rightfully so. They're talking about...or we're talking about, he was dishonest, it was egregious, things like this. But the standard for impeachment is clear. And, again, I'm having a Page print that and I'm going to hand that out to you. It's out of the Mock report. This standard is fleshed out in the State v. Douglas case, the Hastings decision, all the cases that we've had, the minimal cases that we've had, dealing with impeachment. So a misdemeanor within the meaning of Article IV, Section 5 of the Nebraska Constitution is conduct that: A. (1) subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest; (2) consisting of either (a) a crime or misdemeanor, (b) a mere neglect...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...of duty, willfully done with a corrupt intention or where the negligence is so gross and the disregard of the duty so flagrant as to warrant the interference...the inference that it was willful and corrupt and--and here's the crucial part--and related to the duties of office. I don't believe that you can extend any of Mr. Hergert's conduct prior to the election as related to the office. Senator Flood mentioned that he kind of turned on the fact that the report was filed on January 11. The reality is, that report was signed on the 4th, and could have been turned in that day, but it wasn't. There...in my researching of this issue, in our lawyer's opinion, there is conduct that isn't appropriate, but none of it relates to the duties of the office. That is why I'm standing here saying that, yes, we can impeach him today, we have the power to do that, but I think ultimately the Supreme Court will reject the impeachment and come back without a conviction. And then what have we done?

SENATOR CUDABACK: Time, Senator Bourne. Thank you, Senator Bourne and Senator Jensen. Senator Preister, followed by Senator Beutler.

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SENATOR PREISTER: Thank you, Mr. President. If Senator Chambers would like the time, I would yield it to him.

SENATOR CUDABACK: Senator Chambers, almost five minutes.

SENATOR CHAMBERS: Thank you very much, Senator Preister. Members of the Legislature, I want to ask Senator Jensen a question, because I've got to get this straight from him. Senator Jensen, have you ever employed people to work for you?

SENATOR JENSEN: Oh, yes.

SENATOR CHAMBERS: If you had an employee who committed crimes, who lied to you at least six times on important matters, would you continue that person in your employ?

SENATOR JENSEN: No, I would terminate him.

SENATOR CHAMBERS: Well, we have a man here who has lied, knowingly and intentionally, to a governmental agency, and it violated his duty as a Regent because the statute says specifically what a Regent must do, and a candidate. You feel that despite the fact that he lied and committed a felony, at least one felony, the Legislature should not refer this to the court? Is that what you're telling me?

SENATOR JENSEN: No, Senator, I'm just saying that people voted for an individual.

SENATOR CHAMBERS: Senator Jensen, then you're saying if they voted for Jack the Ripper, there should be no way to get Jack the Ripper out of office. Isn't that true?

SENATOR JENSEN: Well, there is a way to get him out of office, and that's not to vote for him next time.

SENATOR CHAMBERS: What do you think the purpose of impeachment is?

SENATOR JENSEN: Well, I...certainly, I think that we all have a very strong idea what impeachment is. It's to remove somebody

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from office who...

SENATOR CHAMBERS: And you don't think that lying and committing a felony is a just basis for the Legislature to refer the matter to the court, to see what the court says about it? That's the position you've taken, isn't it?

SENATOR JENSEN: Has he been convicted of a felony?

SENATOR CHAMBERS: No, he committed crimes that rise to the level of a felony. He could not be prosecuted because he was given immunity. But the Supreme Court will look at the elements of his conduct and see what it was that he committed. And it does not have to be proved beyond a reasonable doubt, but only clear and convincingly, that he knowingly falsified certain information. If that is proved, then under the statute that is felonious conduct. Shouldn't that be presented to the court? Because Hergert has confessed to all of the things in the charges, or they will be proved by documentary evidence and the word of witnesses which contradict things he has said. So there is no question that he committed these wrongful acts. That is conclusively established. And in his settlement, he made these confessions. And the statute that relates to Accountability and Disclosure sanctions says specifically that no matter how a person may be sanctioned by this commission, that does not prevent the Legislature from impeaching that individual. So it shows the Legislature knew that there would be people who may be sanctioned by that commission, but nevertheless they were subject to impeachment. None of that has an impact on your mind or your judgment. Isn't that what you're telling us?

SENATOR JENSEN: No, I would like to ask one question, though.

SENATOR CHAMBERS: Sure.

SENATOR JENSEN: When he appeared before the Accountability and Disclosure Commission and they said, you did wrong, he admitted that, he paid that fine, does that stop there?

SENATOR CHAMBERS: No, that stops as far as the commission. But under the constitution, a person can be impeached whether or not

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he or she has been charged and convicted. If charged and convicted, that person can be impeached. On the other hand, if the person is impeached, that person can be taken to trial and punished. That is specifically set out in the constitution, so some people are playing fast and loose if they've given you the impression that if an administrative agency...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...has taken action the Legislature cannot impeach. But you do stand by what you said? If you had a lying employee, you'd fire that person.

SENATOR JENSEN: I would.

SENATOR CHAMBERS: You'd hold that person to a higher standard than you hold a Regent. Is that true?

SENATOR JENSEN: I've always held my employees to a higher standard.

SENATOR CHAMBERS: Let me put this to you.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: You know that the president of a student body can be a nonvoting member of the Board of Regents.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: But if that person were to cheat on an exam and be put out of school, that person is also kicked off the Board of Regents. Are you aware of that?

SENATOR JENSEN: I understand that, yes.

SENATOR CHAMBERS: So we should a student to a higher standard than a Regent. That's what you're saying, isn't it?

SENATOR JENSEN: I think any elected official should be held to a higher standard. I do that.

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SENATOR CHAMBERS: Then why do you say, when this man has admitted that he lied, we should not refer it to the court to let appropriate action be taken? We're the only one who can do that. Why should we give him a free pass? You've shown yourself to be, from things you've said in the past, a man of moral...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...conduct and ethical beliefs. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, I want to pick up on Senator Bourne's comments with respect to the January 11 filing and the argument that that was done before he came into office. First of all, you remember from my conversation with Senator Mines that what he did was fail to report \$13,000 of expenditures that took place several months before. The effect of that was that his Forty Percent Affidavit, which gave funds to his opponent, would not show 40 percent of estimated expenditures until almost election day, when in fact it would have come much earlier in time. So it's part of that manipulative process to keep his opponent from getting campaign funds, and he knew exactly how this worked. You know, in his discussion with the State Patrol, he said: I never read the treasurer's report, I didn't know anything about it; it was all just a series of inadvertent mistakes. And when you interview his treasurer, he says: I never had anything to do with the money; I didn't even read the treasurer's report and I just signed the things that came in from his secretary. And when you talk to his secretary, she says: I didn't know any...I didn't read the reports, I didn't know what was happening. And yet, when you look at the series of events, somebody knew each and every way to get around the law, to stretch the law, to keep funds from going to his opponent. Now, with respect to the January 11 report, I want to address that specifically, because the law is that it is filed when it is received by the

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Accountability Commission. It was received on the 11th. He may have prepared part of it on the 4th, but it was not received by the Accountability Commission till the 11th, and that evidence is clear. What Senator Bourne seems to be saying is, if I lied on the 4th and was clever enough not to send it to the...till the 11th, thinking I'd be okay, my gosh, should we accept that kind of thought? But you don't have to accept that kind of thought, because the law is, the act is not completed until it's filed; it's not filed until it's received by the commission. It was received by the commission on January 11; that's after January 6, when he took office; it was an act committed while he was in office. With respect to the oath, and I'm not sure what Senator Bourne was trying to say there, but let me just read again from the Nebraska Supreme Court and their general statement about how they think the law should be interpreted. Quote: The result is that an unimpeachable...an impeachable high crime or misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudiced to the public interest, and this may consist of a violation of the constitution, of law, of an official oath--of an official oath--or of duty by an act committed or omitted, or by violating a positive law by the abuse of discretionary powers from improper motives or from an improper purpose. The court's statement of what they might look at is very broad and just because the election laws don't happen to have come before them doesn't mean that they wouldn't look very seriously at including election laws in that category of laws that are related to the office. In fact, I have little doubt in my mind but they would.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Mr. Domina has no doubt in his mind. You know, the number of articles that are in this petition, when this was handed over to Mr. Domina, nobody said, you know, find four articles, or find five, or find six. He came back with ten different instances and, you know, he was conservative at that. With regard to that January 6 meeting that Senator Mines and I talked about that had involved the \$13,000 of expenditures for opinion...or for opponent research early on, there were two other things, two other expenditures that he made that were not

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in the proper reporting period which further distorted the timing of the Forty Percent Affidavit, but Mr. Domina chose not to use those. He used just the clearest and most egregious example. If I have...

SENATOR CUDABACK: Time, Senator Beutler. Thank you.

SENATOR BEUTLER: Is my time up, Mister...Senator Cudaback?

SENATOR CUDABACK: It is time.

SENATOR BEUTLER: Okay. Thank you.

SENATOR CUDABACK: Yeah. Thank you, Senator Beutler. Senator Stuthman, followed by Senator Langemeier.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I haven't spoke on this and I have been very cautious as to what I am planning to say and as to the pattern that I'm going to try to lay out for you. I'm going to take a little bit of a different approach on this. I was not convinced initially that some action should be taken, but when I got...the documents have all come down and I saw a pattern of what was happening with his filings and then also the pattern of when he had taken the oath and that he had not, in my opinion, been honest in taking that oath. But I think there's something about, in my opinion, the way I look at it, as a member of the Board of Regents is a person that I look very highly upon, a person that should be the one setting examples for a lot of people. And what do I mean by a lot of people? The member of the Board of Regents is the layer of power over our University of Nebraska. We have a lot of students at the University of Nebraska, and I think we haven't given any credit to the group of students at the University of Nebraska that are really taking a serious look at this. They are concerned of the leadership that is over them as to the examples that they are setting. This group of people are going to be leaders in the future. We all learn by the examples of other people. Is that something that we want these young people to see, that no matter what you want to get done you do it at any cost, just get it done? And I'm, like I said before, I'm really proud of the students at the university,

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especially that group that organized and got together and have a real concern of what is happening, what the examples are being set forth for those people, you know. They need to have some credit and I truly respect them because they, some of them members, will be down here in the future. With that, I'll turn the balance of my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, about 2.5.

SENATOR CHAMBERS: Thank you, Senator Stuthman. Thank you, Mr. President. The issues are clear. I've had people who told me they voted for Hergert but they would not have voted for him had they known what he did. I've had people who said they supported him other than just by a vote, and they would not have supported him had they known what he had done. And one of them told me, my vote on the resolution lets you know what my view of that is, because this person had supported Hergert, not knowing what Hergert had done. So we're not taking anything from the voters. And I'm very disappointed in Senator Jensen, who stands on the floor and talks about other issues in a way that is more or less consistent, and will say he would fire an employee but he doesn't think that a Regent who has lied and engaged in felonious conduct repeatedly, knowingly and intentionally, should not be turned over. And Senator Bourne knows better, as a lawyer, than the argument he's making that somebody signs a document on the 4th and that's when it's effective. He knows that if you have 30 days to appeal an action and that 32nd day comes and you file your paper and you say, but I signed it 6 days before the...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...30th day expired, they'd say, get out of here, if you're that dumb we're going to disbar you. If you all have an insurance premium and there's a date when it's due and the check arrives three days late and you say, but the date I wrote on the check was three days before the...it was due, they'd say, no, we go by when we got it, buddy. So for him to stand up here and say that Hergert allegedly signed this thing on one day, and that's what...that's when you ought to say it has legal effect is preposterous. It had no legal effect

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whatsoever as long as Hergert kept it in his possession. It became a completed act when it arrived at the Accountability and Disclosure Commission. So every time they raise one of these false, empty positions, I will deal with it only as briefly as is needed to show that it has no merit whatsoever. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Langemeier.

SENATOR LANGEMEIER: Mr. President, members of the body, I never sat on any of these committees so this is all kind of a new topic to me as this session has rolled on, as we've dealt with education issues and other issues that have come before us. I have read all the material that's been handed out. I've read the reports. I read the legal opinions. I'm not an attorney. I've enjoyed listening to the different sides here today and so I am going to take this time and I'm going to yield it to Senator Bourne to continue his discussion, and I will hit my light again and I will yield it to the other side so I can continue to hear the views on both cases, per se, and opinions to both sides. With that, I'd yield my time to Senator Bourne.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President. Thank you, Senator Langemeier. I appreciate that. The document that I handed out to you, up on the top has my initials, District 8, the page number at the bottom is 25, that standard that's set out there that begins with...there's two parts, A. and B., that standard was developed throughout the cases that deal with impeachment. And if you follow along there, it says the Nebraska Supreme Court in State v. Douglas, that was the 1984 case when they impeached...when the Legislature impeached the Attorney General, further defined the phrase "misdemeanor in office" by holding the phrase means the act or omission for which an officer may be impeached and removed from the office must relate to the duties of the office. What I had said regarding the signing of the document, that campaign statement could have been filed before the 11th. And so if that means that because he misstated dates as to when he became obligated for those expenditures three

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campaign statements before, and he filed that on the 11th when he could have filed it on the...any time after the 1st, I'm saying that I don't believe that rises or...to the last prong there, that it must be related to the duties of office. We can talk all we want about how upset we are with Mr. Hergert, how he was dishonest, how he's a bad reflection to the students, as Senator Stuthman mentioned, but unless it meets this test on this document that I handed you, the Supreme Court will not impeach him. And I am suggesting to you that if we know, as a Legislature, that he will not be impeached, we should not go forward with this. Because in my mind, and I think...I'm trying to persuade you of this, that an impeachment is a complete act. If the Legislature impeaches him, and nobody has disputed that that is our power to do, but if we know full well that the Supreme Court will not convict him, why are we doing it? Are we sending a message to Mr. Hergert that we don't like his conduct? Well, if that's the case, then we can do so through a reprimand or a rebuke of some sort. Why do we have to continue to move forward on this process, knowing full well that it will not result in a conviction? And I would urge you to read that standard on that document that I handed out to you. That is the test for whether or not an individual can be impeached. No matter how mad we are, how disappointed we are, how poorly he might reflect on the students, if it doesn't meet this test the Supreme Court will not convict him. And I am suggesting to you that his conduct, no matter how bad, how...whatever you want to phrase it at, does not rise to the level of an impeachable offense. I want to touch briefly on the oath that Senator Beutler has raised. Our special committee attorney, Clarence Mock, looked at this issue. He researched all the cases from which our constitutional language came from; meaning, we have constitutional language regarding impeachment, our attorney looked at every state who has the same constitutional language regarding impeachment, looked at their cases, and could not find one case...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...in any of those jurisdictions that talked about the oath of office. The oath is a predicate to the office. There has never been, according to our research, never

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been an impeachment based upon the oath. I asked Mr. Mock to look into that. That was a component of this and it has never been used as an impeachment device, ever, in any jurisdiction. This oath was put into the statutes in 1875, over 100 years prior to the Accountability and Disclosure Act, which is what we are asserting, or the opponents are asserting, that Mr. Hergert violated. It doesn't quite fit. We're trying to put a square peg into a round hole, in my opinion. His conduct, no matter how bad, does not rise to the level of an impeachable offense. When I get up to speak next, I'm going to compare and contrast Mr. Hergert's conduct with the other individuals who have been impeached in Nebraska, and you'll see that it clearly falls short. The others involve bribery, theft, fraud, stealing.

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: This doesn't even compare.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Brashear, followed by Senator Bourne.

SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. I have modified or modulated my participation in this proceeding for reasons that are amply spread upon the record, and I'm not going to take my time to recite them, and they relate to my prior professional involvement, like we all have lives outside of this Chamber. So I'm going to continue on the modulated approach, but I will also tell you that I'm not going to allow silence to be construed as consent, and I'm not going to allow fiction to become fact by repetitious recitation, nor the truth to be obscured for political purposes. I am not Senator Chambers and I am not Senator Beutler. That's obvious. We all have different standards. But I will tell you this is political. The entirety of this began with a complaint by Christopher John Beutler to the Accountability and Disclosure Commission against Mr. Hergert. Charges were brought by the bureaucratic entity established by Senator Beutler through law. Charges were brought. Defense was engaged. Proceedings ensued in secret, as required by the law passed by Senator Beutler and others of his colleagues at the time, before I came here. They proceeded in secret and then there was a negotiated resolution

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of the charges brought by Christopher John Beutler. End of story. Attorney General participated and consulted, and that's why he couldn't prefer charges himself if he found anything. We've had smoke screen, after smoke screen, after smoke screen. That's why the whole grand jury pursuit, people. The Attorney General could have brought the charges, but he couldn't bring the charges because he had participated in the resolution of the process. So then there's no question about the course run. We can impeach. But the reason I made the statement that I'm not Senator Chambers and I'm not Senator Beutler, as I sit here today to have most starkly contrasted this, it seems to be my week to talk about procedure. What I should have done was walk the floor, as some did, seeking articles of impeachment against Drew Miller. There's no statute of limitations on impeachment. And even though Drew Miller's attorney, who sometimes represents the Legislature, got the consent of the county attorney for Lancaster County that there would be no criminal prosecution in Drew Miller's case, I'm the one who brought to the floor and distributed Drew Miller's own e-mail saying he was engaged in a scheme and artifice to circumvent the campaign finance law. I'm the greater fool who didn't immediately, when Senator Schrock, Senator Chambers, and Senator Beutler began...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...doing what they were doing, I should have asked you to impeach Drew Miller and then we could have two of these. It's political when someone stands before you, knows better, and argues that a scientific poll is greater truth and fact and evidence than an election, which was not contested, which was not overthrown, which was not anything. A scientific poll now is evidence? Now, what we're doing here, what we're doing here is what we call, in the law, stacking. You see, the Accountability and Disclosure Commission proceeded, concluded, it was over. But if you have the wrong enemies, the people who will say on the floor that they're going to pursue no matter what, they will not be stopped.

SENATOR CUDABACK: Time, Senator Beutler...or, Senator, I'm sorry, Senator Beutler, Senator Brashear. Sorry about that. Senator Bourne.

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SPEAKER BRASHEAR: Macht nichts.

SENATOR CUDABACK: Thank you. Senator Bourne, followed by Senator Janssen.

SENATOR BOURNE: Senator Brashear, if you'd like my time, I'd yield to you. You seem to be on a roll. (Laughter)

SENATOR CUDABACK: Senator Brashear.

SPEAKER BRASHEAR: Mr. President, members of the body, thank you, Senator Bourne. I'm not on a roll. I'm just trying to contribute to the process and then I'll quit. You see what we're doing is stacking. If you've got the wrong kind of enemies and they're lawfully, legitimately utilizing the process and arriving at their own conclusions, then you go next, after you get done with all of the...whatever the Accountability and Disclosure Commission has or doesn't have, then you go next to having the...you get the Attorney General. You use the influence of your office to get the Attorney General to do an investigation that he's already checked out of. But you can do that if you're senior. If you've got authority over lots of things, you can manipulate a political Attorney General to pursue something. So now we're into having the resources of the whole Nebraska State Patrol put together 700 pages of documents so we can all pore through the opinions of an investigator who is in pursuit of prey, not truth. Because if the investigator had found something, then the...knew the Attorney General would have done something about it. No. Start reading the tea leaves. Now we're engaged in the game of what we call in the law renting an expert. If you can't find one, hire a different one. There are four violations cited in this...these Articles of Impeachment that I have filed a complaint before the Accountability and Disclosure Commission alleging violation by a then-sitting official, Regent Don Blank, and it's still pending. You'll hear from me. I'll send you a few things in the mail after we've all parted here. I intend to be heard on this issue. I dare that Accountability and Disclosure Commission to come down with something contrary to law with regard to the four violations, four things that Regent Hergert is charged with. I

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filed the complaint, but I'm only Kermit Allen Brashear II. I don't count. I'm not the father of the Accountability and Disclosure Commission. I don't whisper in anybody's ear, and I don't manipulate the process. I participate in accordance with due process, negotiate in good faith, and conclude transactions in accordance with the law. Now we are really stretching and what I am most concerned, and the reason I rose and the reason I'm speaking the way I am, we must stop this. Nobody enjoys working with and has more respect for Senator Chambers than I do, and he'll just have to live with the statement, because I'm proud of our ability to work together. But there are limits. Everybody has to be able to take no for an answer. We've got the "Martha Stewart" allegation in here. That's a relatively new creation. We're going back to the "improperly influence an election," and we're saying that with regard to campaign contributions and free money, taxpayer money, and advertising. There's no evidence in here that anybody's opinion would have been changed by the expenditure of any more money. That's a...talk about a leap into the stratosphere. Senator Chambers has had people tell him that Regent Hergert wouldn't have gotten their vote. Well, guess what, I've had people tell me...I've had multiple people tell me if the election were held today they'd still vote against Don Blank and for Regent Hergert.

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: What's that? That's not evidence. Don't let them tell you what evidence is. I urge the careful consideration because I'm concerned that anybody can come here any time, and if they're as dynamic as Senator Chambers or whatever, they can take this process. It's perfectly legitimate. There aren't any statutes of limitation and they can turn this into the pursuit of things for their own political ends. I'm sorry that Regent Hergert is the only person, other than Lorelee Byrd, who ever offended Senator Chambers. Lorelee Byrd resigned. Regent Hergert hasn't. But this is not the appropriate use of this process and it does not uphold the dignity and honor of this body. And I'm sorry, when you construct a Campaign Finance Limitation Act that takes 29 pages to correct...oh, by the way, the definition of "expenditure" in here, which is set forth as if it was an absolute standard,...

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SENATOR CUDABACK: Time, Senator Brashear.

SPEAKER BRASHEAR: ...Senator Beutler and Frank Daley saw fit to take...

SENATOR CUDABACK: Time.

SPEAKER BRASHEAR: ...the opinion of Regent...

SENATOR CUDABACK: Time, Senator Brashear.

SPEAKER BRASHEAR: ...Hergert's attorneys to correct that definition in the revision you just adopted.

SENATOR CUDABACK: Time, Senator. Further discussion? Senator Janssen, followed by Senator Connealy.

SENATOR JANSSEN: Thank you, Senator Cudaback. In my opinion, for whatever that's worth, these discussions must be done. No one should just close their eyes and sweep things under a rug without having something like this done. Anyway, what kind of a...you know, what kind of a message are we sending our children, our grandchildren, and our constituents, and to the University of Nebraska, the students there? What will ever become of this? I'm no lawyer. I don't know. There are a lot of lawyers in here and I'm sure their opinions are all different. Some say, yes, there's been an offense committed. Others say, no, there was no offense. So instead of just babbling on, I'll let Senator Beutler have the rest of my time.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Brashear, I don't know quite how to respond to you, but I think I have to say, quite strongly, I think that was a shameful analysis and a totally inappropriate analysis. Nobody has more power in this whole scene than you do. This is not a question of power. I can't influence people to do things that aren't right. Senator Schrock, what's his motivation? What's this big conspiracy out there? I think we just have a lot of plain old people that are trying to do things

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right. I mean I just feel I don't know where to begin to respond to you because it's all so totally off base. The problems were brought on by Regent Hergert, by what he did, and we have sought today to describe, time and time again, the behaviors and the law, and how it all fits together. Nobody is persecuting anybody. The Accountability Commission doesn't have favorites. I don't have favorites. This is a Republican primary, as far as partisan politics is concerns. I mean, I just...I'm just astounded that you have weaved this conspiratorial theory involving so many different elements and conclude that that's what this is all about. That is not what this is all about. This is about the duty of the Legislature to uphold the election laws. There is no more important duty that we have. The power of impeachment is given to us. It wasn't given to somebody else. Either we exercise it or we don't. And the question is whether it should be exercised in the case of Regent Hergert. I happen to think that there's strong reason to do that. Senator Brashear may think there was strong reason to do that in the case of Senator...of Regent Miller, but this body, at the time, didn't think that those...thought that that violation rose to the same level. It was a \$6,000 fine. This is a \$33,000 fine. I mean, at some point you've got to say stop or the election laws become totally a joke.

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: Where do you say stop? That's what we're trying to decide here today. And I think we all owe it to each other to recognize that we're all motivated by the right motivations, not by some kind of embarrassing conspiratorial theory. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler and Senator Janssen. Senator Connealy, followed by Senator Smith.

SENATOR CONNEALY: Thank you, Mr. President. I yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers, almost five minutes.

SENATOR CHAMBERS: Thank you, Senator Connealy. Thank you,

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Mr. President. Senator Brashear and I have worked together. Senator Brashear talked about using the power of one's office. Do you think when he went before the Accountability and Disclosure Commission his being Speaker of the Legislature did not follow him? He pointed out here today, and several other times, how he dislikes this whole area of the law. Senator Brashear brought me into this by mentioning me by name and talking about the senior, which I presume referred to me, manipulating the Attorney General's Office. Senator Brashear represented this scoundrel and worked out the deal, and he knows Hergert lied. He knows Hergert intentionally violated the law or he wouldn't have worked out this deal. He would have said these are accidents, and accidents carry no culpability. The deal that Senator Brashear worked out cannot exonerate Hergert. That deal and his admissions mark him as a liar, officially, on the record. Now Senator Brashear has been stung, and people react different ways when they've been stung. We all know this is a critical time in the session. He's under a lot of pressures and I take that into consideration, and I just attribute what he said with reference to me to be the outbursts of a person whose emotions ran away with him. So I'm going to take the high road and let him know that I understand and I won't take it personally, and any relationship that he and I had or that I thought we had remains as intact after his outburst as it was prior to that, if we indeed had a genuine relationship. I've never "cheap-shotted" him on the floor, and I've told him I would never do that, and I mean it. But when somebody takes out after me in the way that he did, I go by what he said prior to doing it, that my silence could give consent. Senator Brashear knows what impeachment is about. He knows that if he had a member of his legal staff who lied and engaged in felonious conduct, he would fire that person. He knows that a lawyer will be disbarred for far less than what Regent Hergert has done. He knows that had a student regent plagiarized and not committed as many violations of the positive law as Hergert did, that student would be kicked off the Board of Regents. He knows that. We all know it. What is making it political is the things that are being said by Senator Bourne, Senator Brashear, Senator Jensen, and others who want to impugn not only the motives of the Legislature and the legislators, but the very authority given to the Legislature by the people of this state by way of the

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constitution. There is nothing evil about the process of impeachment. And Senator Bourne can say all he wants to that we have to decide how a court is going to decide. Now, he doesn't practice law lately, as far as I know, but he might remember this. The code of professional responsibility says that if a lawyer guarantees to a client the outcome, that is a violation of a lawyer's ethics. Yeah, I read the code. If a lawyer guarantees to a client an outcome,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...that violates the code, because the lawyer doesn't know the outcome and he cannot make that representation to a client. We don't have to do the court's work. That's why it's taken into the court. All we have to do is determine by a standard of probable cause that this man committed violations, and he has already confessed them. So our standard has been met by the agreement that Senator Brashear obtained. So what are we doing here? There's those of us who believe that integrity follows an elected official, and if one of our colleagues lied to us this many times you know what our response would be and how we wouldn't trust that person. We know that. Senator Brashear knows it. Senator Bourne knows it. And I've heard them make comments at various times that lets me know they know it. Now, they may have forgotten...

SENATOR CUDABACK: Time, Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Smith, followed by Senator Johnson.

SENATOR SMITH: Thank you, Mr. President and members. This is pretty serious business. I'm not an attorney, but I vividly recall approximately one year ago when the motion was modified that would ask Mr. Hergert, Regent Hergert, to resign or a furtherance of the process would be reviewed and legal opinions obtained and otherwise. So I supported that resolution because I was hoping that it would bring resolution, if you will, to the issue so that those of us in western Nebraska, who reside in

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Regent Hergert's district, can move on. This is probably one of the most difficult speeches I've made, certainly decisions that I've made (laugh) on this, my last day in the Legislature, because I do have a planned absence tomorrow. But as I look back, the debate last year, the course of events prior till now, I have to weigh everything. And I must say that when we...let me speak in first person singular, when I would ask that Mr. Hergert resign via the resolution or we look at other legal advice on what should take place, and that legal advice comes down and recommends some action or no action, however you would like to characterize it, but that these are not impeachable offenses, that's pretty serious. Because an attempt to overturn the wishes of the voters is even more serious business. Now I reside in Regent Hergert's district. I can tell you that the voters go both ways on this issue. Strong opinions out there both ways. Some of it's based on anecdotal background; some of it isn't. I have to wonder if the activities that took place truly would have changed the outcome of the election. I'm not convinced that they would have or that, had these activities not taken place, that we would have a different outcome in the election. And I am constantly trying to weigh back and forth, but up till now I remain unconvinced that these offenses are impeachable. I want resolution brought to this issue as soon as possible and I think that voting no on the impeachment will allow us to move forward. I think this is a healthy debate. I'm not afraid to participate. (Laugh) It'd be a lot easier to take a walk down the hall and avoid tough decisions, but that's not why I'm here. So when we look at these issues and we...and we sift through all of them...and I will never impugn any of my colleagues for disagreeing with me. That's what public debate is all about. But I struggle to find enough reasons or a reason large enough to say that we need to refer this to the Supreme Court, especially when we have advice otherwise. I would yield the balance of my time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear, about 1, 8. Brashear waives his opportunity. Senator Johnson, followed by Senator Friend.

SENATOR JOHNSON: Senator Cudaback, fellow members, last night and yesterday were some of the most difficult in this session,

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and perhaps in several sessions. Personally, I am honored to be a member of a group that has been chosen to solve these difficult problems, particularly between adversaries like yesterday and last night that apparently were incapable of negotiation and compromise. Isn't it ironic that the principals that could not negotiate about education, when they claim to be educated individuals themselves, and then turn around and tell us that education is the basis of a civilized society? Today gets no easier. This is an historic day. These are serious charges against an elected official. I see us as a group of prosecuting attorneys meeting to decide if the charges have enough validity to submit the case to a jury, which in this case is unusual because the jury is the Nebraska Supreme Court. Today is not an impeachment trial. It is to determine if there are grounds that are valid enough to ask for that trial. The questions that we as a group need to ask ourselves, we laymen, is, did he do it? Did he mean to do it? Did he benefit by doing it? Did he ever avail of himself to meet with the representatives of the Legislature to present his side of the story? Did he then state that there was no such opportunity ever presented to him to give that side? Does he have the confidence of the people that he represents? Yes, a poll, a valid poll, isn't evidence, but when you use it for an excuse not to resign when you have less than 20 percent of the support of the people, it certainly is significant. The critical point, however, is this. What would the punishment be for a student who deliberately falsifies or cheats on a test, or a faculty member that plagiarizes? Can he govern and enforce the rules on these individuals when he does not obey them himself? You know the answers as well as I do to these questions. I escorted Mr. Hergert right up there to take his oath. He did it in front of all of us. Why are we arguing about a time line when these incidents occurred? They occurred right up there in front of all of us. One last thing. I want to applaud Senator Smith for saying that he...

SENATOR CUDABACK: One minute.

SENATOR JOHNSON: ...was going to vote up or down. Unless you have a reason to recuse yourself from voting today, vote red or green, or I'll think it says something about you as well as

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Mr. Hergert. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Friend, followed by Senator Fischer.

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I've already established, or at least in my mind, pointed out various reasons why I think we have a flawed system that we're trying to deal with, and we have to deal with it. So that's fine. We will deal with it. I'm trying to stay open-minded here, too, but I think we have to ask ourselves a quick question, and I'm going to yield some time to Senator Bourne here, because whether we like it or not, a legal remedy has already been distributed under these circumstances that we're dealing with here. Doesn't that automatically make it a political issue? In some ways it does, in my mind. Because this issue has been dealt with already from a legal standpoint, doesn't it, in a lot of ways, make it a political issue now? I think that that's a very relevant rhetorical question. With that, I would yield the remainder of my time to Senator Bourne. Thank you.

SENATOR CUDABACK: Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President and members. Thank you, Senator Friend. I handed out to you the standard that is clear that must be met in order for an impeachment to achieve conviction. I would ask the members who haven't yet spoken here today to push your light on, get up, and ask Senator Chambers or Senator Beutler to lay out their case as to what conduct Mr. Hergert did that satisfies the test that our Supreme Court will use to determine whether or not to convict on this impeachment. It hasn't been done yet today. I would ask anyone to get up and say, take me through the test, Senator Chambers or Senator Beutler; take me through the test and tell me how you are going to achieve a conviction on the impeachment. Because if you don't ultimately get a conviction, why are we doing this? In my mind, it is political. I don't know if this is just a perfect storm that's taken on a life of its own. I don't know if there's agendas. I don't know what...frankly, I don't know what is going on, why this...why we are where we are. I have

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looked at this data extensively. I've spent hours looking at it. Legal counsel spent hours looking at it. Our hired attorney has spent hours looking at it and he never made any guarantees that there wouldn't be a conviction. I don't know where Senator Chambers...you know, he's right, that is an ethical violation, but nobody did that. If you read the Mock opinion, which I gave to all of you, he says, it is my opinion, I conclude, or I think that. He says impeachment doesn't lie. I believe that I made one mistake in this entire adventure. The very first day...Senator Engel touched on this. The very first day we had our subcommittee hearing, we're talking back and forth and Senator Chambers says, no matter what you all do, I'm going to bring Articles of Impeachment; they will be on the floor. He said that. Ask any of the committee members. That's what was said. The mistake that I made is that I should have, rather than spending all this time, all this money, what I should have just done is disbanded the subcommittee, gone back to the Executive Board and said, look, this is futile, these articles are coming regardless; we shouldn't even bother proceeding with a subcommittee because we have a member that says, no matter, what I'm going to get this in front of the Legislature. And that is his prerogative to do. No one has disputed that. It is our prerogative as a Legislature to impeach this man if we see fit, if 25 people in here...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...vote to do so. No one has disputed that. What I'm saying to you is, go through the test, go through the established test. I handed it out to you. Challenge Senator Beutler and Senator Chambers to satisfy each and every element of this test, and if they can do that, then vote green, because then the court will impeach him if it meets this test. I don't think they can do it. I don't think, when it's presented to the Supreme Court, it will result in a conviction, and I think that this is an exercise in futility. I'm not guaranteeing anything. My opinion is that if we impeach today he will not be convicted in the Supreme Court. And if that's the case, I ask you, why are we doing this? Senator Janssen and others mentioned we shouldn't sweep this under the rug. We haven't. This man has been humiliated in the public. He's paid the biggest fine ever

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in front of the Accountability and Disclosure Commission with the consent of the Attorney General. He has paid his fine. He's been embarrassed. I'm not condoning his conduct, but I'm saying it doesn't rise to the level...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: ...of impeachment.

SENATOR CUDABACK: Thank you, Senator Bourne and Senator Friend. Senator Fischer, followed by Senator Erdman.

SENATOR FISCHER: Thank you, Mr. President and members. First of all, I would like to thank all of you who have worked on this issue from both sides. I think all of us in here are taking this very seriously. I know that I am because 10 of my counties out of my 13 reside in Regent Hergert's district also. We've had some material passed out on polls. From the Daily Nebraskan we have a poll. We shouldn't even be talking about polls in here on this issue. I'm offended by that. I can stand up here and say, you know, I've gotten e-mails, I've gotten calls, and these are from people who Regent Hergert represents, who either voted for him or didn't vote for him, and they're telling me what they think. I can give you information on that, and I will say that the majority feel that this is not proper. But we shouldn't even be listening to that. We need to look at the information in front of us and we need to consider what our responsibility is. If we're going to...also, we hear about examples--gee, we need to be a good example--and I fully agree with that, but where we are today is that we need to be a good example in doing our job and in fulfilling our responsibility, and that's in looking at the facts and looking at the information and deciding where we go from here. Earlier this morning, Senator Flood brought up part of the Mock report, which I have spent a great deal of time looking at. And he said on page 37 the Massachusetts courts had a decision. What Senator Flood didn't continue to say was on page 38 in the report, under C. And if you look at it, under the "Misdemeanor in Office," there's Nebraska's definition, and Mr. Mock says, the foregoing demonstrates two different ways--where he's talking about the Massachusetts decision--go two different ways in

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defining misdemeanors of office or its equivalent, misconduct in office. The most common, if not overwhelmingly applied, definition requires some act of official misconduct, some grave official wrong. In contrast, the Massachusetts definition appears to require simply any act of an officer while holding his office that can be said reasonably to render him unfit to continue to hold office. Which view will the Nebraska Supreme Court adopt? And then he's quoting the State v. Douglas. It is fairly...or his opinion on that. It is fairly evident the Supreme Court requires some sort of official misconduct to constitute a misdemeanor in office, and does not construe that term with the same breadth as Massachusetts. In Douglas, the court stated misdemeanor in office means that the act of omission for which an officer may be impeached and removed from office must relate to the duties of office. I think if you look through this report, you'll find more interesting things that give us an opinion on what our duty is. This was an attorney that I believe gave an opinion. My impression is that opinion, because it didn't reflect some of the wishes of certain members, then we seemed to move ahead. I would like to clarify that I do not know Regent Hergert.

SENATOR CUDABACK: One minute.

SENATOR FISCHER: And I did not vote for Regent Hergert in the election. I did not approve of his campaign tactics. But that doesn't enter into this conversation and the decisions that we make here today. We need to be responsible in our duty and consider the reports that we've been given. Accountability and Disclosure Commission, I've had some of my constituents say to me, they're in statute, they did their job, and you guys don't agree with what they did and so now you're going to do what you want. Is that what we're doing here? I hope not.

SENATOR CUDABACK: Thank you, Senator Fischer. Senator Erdman, followed by Senator Schrock.

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. It's been so long since my last opportunity to speak. I ended on something I was going to say about Senator Chambers and I have forgotten and I won't disclose the

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conversation that he and I have had in order to preserve the identity of his middle name that has been thrown around for other members of the Legislature. (Laughter) The interesting part about this is if you read the Mock opinion, okay, you can come to the idea that won't be convicted. But the Mock opinion doesn't say that I'm right and the other opinions are wrong. Specifically in the opinion, it says, these are supplemental. My opinion is supplemental to those of Senator Chambers and Senator Flood. Ironically, Senator Flood's opinion at that time was similar to what Senator Mock's (sic) opinion is at this time. And Senator Chambers' opinion has been the same throughout this process. So from the standpoint of ignoring or whatever, the reality is what Senator Louden pointed out and what Senator Brashear pointed out. You can shop for the opinion you want to defend what you want to do, and that's what's always going to happen in the legal profession, and if you can get a judge to go along with it, you're going to win. I do find it interesting that as we go through this process and you look at the actual articles, that there are attempts made to expand the language of the constitution. And how far would the expansion be? Well, it's the expansion of LR 26CA, which simply adds the language that any misdemeanor related to the election by which such officer was elected to the office. That is new language, in addition to what's already in Article IV, Section 5, relating to the impeachment, who is liable for impeachment. So as you go through and you read the articles, the argument was made by Senator Beutler effectively on the floor last year during the debate on LR 98 that you can't argue that we can only impeach Drew Miller; you can't argue that because they're both held to the same standards because it logically could be concluded that it should extend to those running for office as well. Fair enough. And as has been pointed out, we're making that logical conclusion here; however, we're ignoring the factual conclusion that we could have impeached another. We have members of the university, student body of the university, or in fact we have a student regent with us today, and I have yet to hear him stand before the Board of Regents and say that he believes that what Mr. Miller did was cheating. And we've had this discussion. Matt and I have had this discussion over lunch the other day. And he says, well, if we would add Mr. Miller to our resolution, would you support it then? I said, at least it would be more

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consistent. And that is true. Am I regretful that we didn't go after someone else? No, I am not. Am I regretful that we're standing here today doing this? No, I am not. This is part of our deliberative process and we can impeach whoever we choose to impeach. That does not guarantee conviction. Let me talk briefly about this theory that the actions prove something, and if an individual had proof or knowledge of what he was doing, he would not have gotten caught. If an individual running under the old campaign finance law would have chosen to not abide and would have chosen to set an arbitrarily high estimate, I'll give you a number, \$1 million, I'm going to spend \$1 million on a general election, you know what the only trigger was? If you spent 40 percent of that. And if you would send in a report that said you'd spent \$400,000, that would have been a trigger as well. But the reality was, it was one trigger, \$400,000, as I understand it. So if you intended to defraud your opponent of public funds, you could have done that. If you intended to defraud your opponent of public funds when you were setting up a loan, you wouldn't have said that was a loan on the form. You would have said this is my money and it's money, and the \$30,000 fine would have been substantially less because of the Nelson amendment that Senator Brashear had adopted into the previous campaign finance law.

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: But all that aside, you have to come back to the argument, and the argument is whether or not those are respective and directly reflective upon the duties of the office. And I think Senator Bourne has tried to outline that. I have told those that are involved in different groups advocating the advancement of impeachment that I don't have a dog in this fight. I'm not trying to convince somebody that I'm right. I'm trying to discern what is clear and convincing before the court. Because if I was a prosecutor and, while I am not an attorney and I have never practiced law, thankfully for most of you, and probably never will, unfortunately, for some that have tried to push me in that direction, if I didn't think the charges would stick, would I file them if I was a prosecutor? If I had to create a tenuous legal argument to try to accomplish that, would it be worth the chance? Senator

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Chambers would say yes. I'm not convinced at this point, and I am grateful that there are a number of lights to continue...

SENATOR CUDABACK: Time, Senator.

SENATOR ERDMAN: ...to hear the arguments from Senator Beutler and Senator Chambers and others. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. Senator Schrock, followed by Senator Loudon.

SENATOR SCHROCK: Mr. President, members of the Legislature, there may be no one in this body I have more respect for than...or admiration for than Senator Brashear, unless it's Jim Cudaback. (Laughter) Attempt at levity there, folks. Lighten up a little bit. And I mean that, Senator Brashear.

SENATOR CUDABACK: I can't...I can't comment.

SENATOR SCHROCK: I mean that. And you're no different than anybody else. I'm sorry, but my conscience won't let me go there. We have a man who violated the law, broke the law six times, cheated and lied. I don't care what you use. And he's sitting there, as a member of our Board of Regents and, I'm sorry, that's bothering me. We may not have 25 votes today. I guess that's okay. Senator Brashear's...I'm sorry, Senator. I don't want to get you mixed up with Dave Hergert. Dave Hergert can serve, but it will be a service of shame. It will be a service that the state of Nebraska won't be proud of. And you know what, if we don't have 25 votes, we'll never know what the Supreme Court would have done. I'd like to know the answer, folks. I have an inquiring mind. And then I ask myself, when is this going to stop? I'm going to ask some questions. When is this going to stop? We probably should have done Drew Miller. It wasn't on my radar screen. And we have elections coming up. Who's going to be the next, and are we going to do anything or are we paper tigers? What kind of a message does this send to the state of Nebraska if we don't do anything? The message I see is, we make the laws, but we don't care if people abide by them. And, yes, it's okay. We'll just sell these offices, whatever it takes, \$1 million, \$2 million, whatever it

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takes. The rich people, they don't have to abide by the laws; poor folks do. That's what this is about. A rich person can afford to break the campaign finance laws. Rich people can. I have a problem with that. Then there's the integrity of the election process. I'm concerned about integrity. Senator Chambers, no one has answered to my satisfaction if whether you break the law in obtaining that office, does that become then a part of holding office? No one has answered that for me. Would you answer that for me?

SENATOR CUDABACK: Is that a question, Senator Schrock?

SENATOR SCHROCK: Yes.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Senator Schrock, in a lengthy memo that I put together, my answer to that question is yes; that as soon as a person becomes a candidate there are statutes that equate the status of a candidate with that of an incumbent who is seeking reelection. Even when it comes to disclosure of criminal history, it says certain things will not be available to the public unless a person is an incumbent or an announced candidate. So the two are put on the same basis. And this issue has not been decided by the court yet, but things that a person who is an incumbent and running can be held accountable for what was done in a previous term. My belief is that once you become a candidate, everything that you do is subject to scrutiny by the court if you win election. That is a continuum. From the time you become a candidate until the time you enter and complete your term of office, that's my view.

SENATOR SCHROCK: My only other comment is, I will always wonder, till the day I die, what would the Supreme Court have said? And if we don't have 25 votes, we don't know. And if there's anybody in this body--they all think they know--if anybody who knows with any certainty, let me know. Thank you for your time.

SENATOR CUDABACK: Thank you, Senator Schrock. (Visitors introduced.) On with discussion of LR 449. Senator Loudon,

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followed by Senator McDonald.

SENATOR LOUDEN: Thank you, Mr. President, and I will yield my time to Senator Bourne.

SENATOR CUDABACK: Senator Bourne, you have almost 5 minutes.

SENATOR BOURNE: Thank you, Mr. President. Thank you, Senator Louden. Senator Schrock, this is a well-established area of law and I would suggest that if you want to know what the Supreme Court would do, read the Mock report, because he sets very clearly what his...in his opinion, the Supreme Court would do. So I think it's pretty clear. That's my opinion. Would Senator Brashear yield to a quick question?

SENATOR CUDABACK: Senator Brashear, would you yield?

SPEAKER BRASHEAR: Yes, Mr. President, I will yield.

SENATOR BOURNE: Senator Brashear, I want to ask you, you had mentioned that you've had some experience in front of the Accountability and Disclosure Commission so I want to tap into that experience, if I could.

SPEAKER BRASHEAR: More than I'd...never mind.

SENATOR BOURNE: (Laugh) More than you want to talk about? Did Mr. Blank file the exact same form that Mr. Hergert did, that Senator Beutler is asserting was the basis for his impeachment, in January? Did he...

SPEAKER BRASHEAR: I don't know how to respond, Senator Bourne, because I don't...

SENATOR BOURNE: Okay, let me rephrase it.

SPEAKER BRASHEAR: I don't know that he filed the form.

SENATOR BOURNE: Does a candidate that loses an election file the B-1 report in January after the election as a summary of the campaign cycle?

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SPEAKER BRASHEAR: Yes.

SENATOR BOURNE: Okay, so would it follow then that Mr. Blank filed that B-1 report in January of '05 after he lost the election?

SPEAKER BRASHEAR: I'm sure he did.

SENATOR BOURNE: Did he have an office at that time?

SPEAKER BRASHEAR: On what date?

SENATOR BOURNE: Okay, then how can that report deal, if he filed it on the same day, how can that report deal or relate to the office?

SPEAKER BRASHEAR: Well, he had an office until his successor was duly qualified.

SENATOR BOURNE: But that statement could have been filed after he left office. The point...thank you, Senator Brashear. The point I'm trying to make is we're trying to extend the filing of this report to the running for the office and saying that's the basis for impeachment. Mr. Blank had to file the same document and he didn't have an office. How can that be an impeachable offense? It's an obligation to file. That doesn't even make sense. If Mr. Blank filed the same document Mr. Hergert did but didn't have an office, how can it relate to the office, looking at it a different way? I want to talk briefly about what some of the other individuals who have been impeached in Nebraska, what their conduct was. In 1871, Governor Butler was impeached for the crime of misappropriating state funds. Some of the assertions, he unlawfully and corruptly, neglecting to discharge his duty in regard to \$16,881 for sale of state public land and appropriating the same to his own use and benefit. This is from 1871 language so it's a little out of date. But he basically stole \$1,681 on one instance from a sale of ground. He entered into numerous scandalous and corrupt agreements for \$1,750, \$914, \$10,000, and \$5,000. When he was a Commissioner of Public Lands, he took a bribe to influence his action and decision to

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locate the state asylum on certain land. He willfully, falsely, and corruptly misrepresented to the Auditor that an attorney retained for the state of Nebraska was to be paid \$2,000 for his services in two warrants of \$1,000 each. Butler took the \$1,000 and gave the other \$1,000 to the attorney. He unlawfully and corruptly entered into a contract to complete the state asylum at a contract price \$88,000 in excess of the sum appropriated, took the money. He misappropriated \$10,000 of state school fund money. This gentleman...and then he was impeached. That was in 1871. Later, six members of the Board of Public Land and Buildings were impeached.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: Some of them were impeached, some weren't because they weren't in office. So you tell me how...the best I can tell, what Regent Hergert did was he misstated by several days when he became obligated for a debt and reported that on the January 11 filing which did take place after he was elected. So you compare our previous history of people we have impeached in this state--misappropriating money, stealing, taking bribes--and compare that with misstating when Regent Hergert became obligated for several debts on the filing that he put in on January 11. And if those compare to what we have impeached an individual for in the past, you should vote green. But I don't think misstating by several days, whether intentionally or not, rises to the level of impeachment. And again, I would ask my members to talk to Senator Beutler and Senator Chambers, have them satisfy the test that is the clear standard under the Supreme Court. Ask them to prove to you that,...

SENATOR CUDABACK: Time.

SENATOR BOURNE: ...Mr. Hergert's conduct meets that test. And if it doesn't...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: ...you should not vote to impeach.

SENATOR CUDABACK: Time, Senator Bourne. Thank you, Senator

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Louden and Senator Bourne. Further discussion on LR 449?
Senator McDonald, followed by Senator Cornett.

SENATOR McDONALD: Mr. President, members of the body, I'm going to read from one of the resolution drafts that we've received. This one says, Nebraska Supreme Court has held that an impeachable misdemeanor is one in its nature or consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest and may consist of a violation of the constitution, of law, or of an official oath. Hergert swore the constitutional oath on January 6, 2005. In the oath, Hergert swore, I have not improperly influenced in any way the vote of any elector. Hergert's oath was false in one or more of the following aspects. He filed false candidate Forty Percent Affidavits on April 21, 2004, May 3, and May 5 of 2004, in September of 2004, in early October of 2004, and October 20 and 22 in 2004; paid Scott Cottingham, a political consultant, with a nonsufficient fund check of \$36,000; borrowed the money to cover the check; falsified when the loan was taken and funds were advanced; falsified report of political consulting and incurring the expense for Scott Cottingham; falsified report on funds committed to be spent with the Jackson-Alvarez Group; filed a false Forty Percent Affidavit in November 12, after the election; filed false campaign expenditure reports and greatly exceeded his estimates; borrowed more money than is permissible; overspent campaign expenses by large sums; deprived opponent of public funds. Hergert's false oath was related to his office. A true oath is required to assume office. The oath's backward-looking component is designed to allow the Legislature to police public service by removing dishonest persons who falsely swear the oath of office. I truly believe that he has and he also has admitted to the excessive loans, the failure to file Forty Percent Affidavits, for the late reporting of the contribution, to inconsistent reporting. He has admitted all of those things. In my mind, we have the facts right in front of us that say it is in duty to his office and he filed a report that was not consistent with the accountability and disclosure laws. And I feel that we have all the evidence that we need to proceed in this. And I will turn the rest of my time over to Senator Chambers.

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SENATOR CUDABACK: Senator Chambers, 1, 58.

SENATOR CHAMBERS: Thank you. Thank you, Senator McDonald. And I'm going to tailgate on what Senator McDonald brought to us because Senator Bourne has gone on and on about this so-called test. And if you read what he gave you, he did not give you everything that's in this section from Douglas' case. It says what Senator Bourne put here. But it also talks about the violation of the constitution of law of an official oath. Why didn't Senator Bourne or Mr. Mock include the part about the oath? And I'm going to go into what Senator Bourne said earlier because he is making a lot of statements that are not true and Mr. Mock did not completely state here what the test is as laid out in the Douglas case, which he purports to quote from. Because my time is so short, that's as far as I'll go at this point. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Cornett, followed by Senator Chambers.

SENATOR CORNETT: I yield my time to Senator Chambers.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Cornett. Thank you, Mr. President. Senator Bourne went on and on about what's on page 25, and this is what he told us. The test is: something which is subversive of some fundamental or essential principle of government or highly prejudicial to the public interest; two, consisting of either a crime or misdemeanor; B, a mere neglect of duty willfully done with a corrupt intention; or where...C, the negligence is so gross and the disregard of the duty so flagrant as to warrant the inference that it was willful and corrupt. But additional language from that provision is that this may consist of a violation of the constitution, a law, or an official oath. Mr. Hergert violated the constitution by violating his official oath which is in the constitution. He violated specific laws. And you don't see that in this so-called test that Senator Bourne has fulminated about. He said, show that any of this is related to the office. Here's

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what is in the statute right now. At Section 32-1602, sub (2), there is a compelling state interest in preserving the integrity of the electoral process in state elections by ensuring that these elections are free from corruption and the appearance of corruption and that this end can be achieved if the sources of funding and the use of that funding in campaigns are fully disclosed. This is what the Legislature says is a compelling state interest. And even in Senator Bourne's vaunted test it says, something which is subversive of some fundamental or essential principle of government. Well, the Legislature stated that the integrity of the election laws is something in which the state has a compelling interest. That is the essential or fundamental part of government which Mr. Hergert subverted. But going beyond that, let us consider what it is that we're looking at here today. A man who has repeatedly violated the law. I'd like to ask Senator Bourne a question.

SENATOR CUDABACK: Senator Bourne, would you yield to a question?

SENATOR BOURNE: Yes.

SENATOR CHAMBERS: Senator Bourne, a person who has been convicted and a final judgment has been entered has 30 days to appeal. For the ease of making my example, let me say that the 30th day, the deadline, is the 15th of the month.

SENATOR BOURNE: Okay.

SENATOR CHAMBERS: The person files the appeal on the 18th of the month. But the person can show that the papers were signed on the 14th of the month, which, if the filing had made then, would have been on time. When the papers are actually filed, is that when the court considers the filing to have occurred or the date that the person signed the appeal papers?

SENATOR BOURNE: Senator Chambers, you're not accurately stating in the way that I did. But I'll play your game...

SENATOR CUDABACK: One minute.

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SENATOR BOURNE: ...and I will say it's when the court received the document.

SENATOR CHAMBERS: Then let's play your game. When did Mr. Hergert's document that we're talking about, which were filed after he took office...

SENATOR BOURNE: I believe it was the 11th of January.

SENATOR CHAMBERS: And what were you saying about its having been signed previously?

SENATOR BOURNE: What I said was it was signed previously and could have been submitted prior to the day he was sworn in.

SENATOR CHAMBERS: But it wasn't, was it?

SENATOR BOURNE: In this case, you're right. It was not.

SENATOR CHAMBERS: So when...

SENATOR BOURNE: But you also, in fairness, you talk about the vaunted test, you left out the word "and," Senator Chambers.

SENATOR CHAMBERS: So when does this...Senator Bourne, when does this filing that we're talking about have occurred as far as the law is concerned?

SENATOR BOURNE: The specific filing that we're talking about regarding Mr. Hergert?

SENATOR CHAMBERS: Yes.

SENATOR BOURNE: January 11.

SENATOR CHAMBERS: Thank you. And on your time, I know you can deal with that. But I want to make clear that these things were done in the way that the articles express. Neither Senator Bourne nor anybody else...

SENATOR CUDABACK: It's now your time, Senator.

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SENATOR CHAMBERS: Oh, thank you, Mr. President.

SENATOR CUDABACK: It will be your third time.

SENATOR CHAMBERS: ...has pointed to an article and said that the conduct alleged did not occur. Senator Bourne can't say that because Mr. Hergert has acknowledged these things. So it's smoke and mirrors. Senator Bourne said that I neglected the word "and." These...this listing that he gave is "or." What he's talking about as far as the "and" related to the duties of office. So let's see what the duties of office are of a person who is office. From the Douglas case, 217 Neb 225: Public officers stand in a fiduciary relationship to the people whom they have been elected or appointed to serve. As fiduciaries and trustees of the public weal they are under an inescapable obligation to serve the public with highest fidelity. These are duties of office. In discharging the duties of their office they are required to display such intelligence and skill as they are capable of, to be diligent and conscientious, to exercise their discretion not arbitrarily but reasonably. And this is what the court said. And above all to display good faith, honesty, and integrity. Those are the duties of office that Hergert violated, and Senator Bourne, had he read the Douglas case, would know that these are duties of office, to be...act in good faith, to be honest, and act with integrity. The Douglas case did not say that you can lie repeatedly, as Hergert did; that you can file a false report after getting in office to a governmental agency, and that's all right. The court said, you must act with good faith, honesty, and integrity. Continuing: These officials must be impervious to corrupting influences and they must transact their business frankly and openly in the light of public scrutiny so that the public may know and be able to judge them and their work fairly. And I would emphasize what I'm going to read next, for Senator Bourne, Senator Brashear, and Senator Jensen. These obligations are not mere theoretical concepts or idealistic abstractions of no practical force and effect; they are obligations imposed by the common law on public officers and assumed by them as a matter of law upon their entering public office. As a matter of law, this official is required to act with integrity, honesty, and integrity. As a

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matter of law. That's what the Douglas court said. Mr. Mock didn't put that in his report. The law says, as articulated by the Nebraska Supreme Court, that when you take an office, a duty attached to that office is to display good faith, honesty, and integrity. But Senator Bourne and others would turn that on its head and say if you lied in an official proceeding, that's all right. If you knowingly falsify a report, that's all right, because the law of Nebraska does not require an elected official to act with honesty and integrity. The law protects a person who has intentionally...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...lied in violation of the law. The law protects a public official who engaged in felonious misconduct. That is not the law. And I'm not making this up. I will tell you again. If you go to pages 225 and 226 of the Douglas case, found at 217 Neb 199, you will see this language. It is clear that Mr. Hergert violated the duty of his office while he was in office when he filed that fraudulent, lying report on January 11, five days after he took the oath. And at the time he took the oath, he was in violation of that oath. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Stuhr, followed by Senators Flood, Combs, Brown, Schimek, and others.

SENATOR STUHR: Thank you, Mr. President and members of the body. I don't have a legal background. But I have appreciated the discussion that has taken place on this issue and particularly I have appreciated the attorneys in this body and the work that they have done on this issue. I believe there are issues of dishonesty involved. After reading the summary of Mr. Hergert's former treasurer, I believe there were intentional and unethical actions by Mr. Hergert. I feel elected officials should be dealt with more stringently for the kind of action that has taken place, or how can we expect ordinary citizens to abide and be honest and truthful in their actions? I believe Mr. Hergert's actions were very inappropriate. He did not act in good faith, did not act in an ethical manner. I do have one

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question that troubles me, and that is, why has he hired lobbyists to represent him, which he has done to try and influence members of this body? I have a real troubling aspect about that. I will turn the remainder of my time over to Senator Chambers. Thank you.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Senator Stuhr. How much time do I have, Mr. President?

SENATOR CUDABACK: Senator Stuhr used about 1.5 minutes.

SENATOR CHAMBERS: Thank you. I would like to ask Senator Smith a question or two.

SENATOR CUDABACK: Senator Smith, would you yield?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Senator Smith, did you say that one of the first things...what was one of the first things you said you'd do if you're elected to Congress with reference to chicory?

SENATOR SMITH: With reference to chicory?

SENATOR CHAMBERS: Um-hum. You don't know what you put on your web site?

SENATOR SMITH: Well, I know that chicory is a crop that...

SENATOR CHAMBERS: Well, what did you say was one of the first things you're going to do? If you don't remember what you said about it, I'll let that go.

SENATOR SMITH: Make federal policy friendlier to alternative crops.

SENATOR CHAMBERS: And chicory was named specifically, wasn't it?

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SENATOR SMITH: Yes.

SENATOR CHAMBERS: Who has the only chicory plant in Nebraska?

SENATOR SMITH: I would imagine that you're looking for me to say Dave Hergert and he probably is, so...

SENATOR CHAMBERS: Okay.

SENATOR SMITH: ...characterize it as you wish.

SENATOR CHAMBERS: Have you ever heard of a man named John Stinner?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: He is the president of Valley Bank and Trust in Gering, Nebraska. Is he a person of good character as far as you know?

SENATOR SMITH: Yes.

SENATOR CHAMBERS: Thank you. This is what Mr. Stinner said during his interview. Stinner advised he was unsure if Hergert had intentionally planned to improperly report expenses but stated many people in the Scottsbluff area had the opinion Hergert believes he is above the rules due to his financial situation. Stinner also stated he did not believe Hergert had retained support in the Scottsbluff area to the degree Hergert believed. Stinner stated he believed Hergert may be projecting the attitude that he did not need to follow the rules that were meant for everyone else. In addition to that, Mr. Stinner saw the necessity of filing this suspicious activity report with the FDIC because of the fact that Hergert came in there and requested a \$65,000 line of credit to draw loans from the bank to support campaign expenditures. Stinner advised that on October 22, Hergert signed the line of credit agreement and immediately transferred \$44,000 into the campaign account. Stinner stated he was also aware that two...

SENATOR CUDABACK: One minute.

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SENATOR CHAMBERS: ...checks for over \$40,000 had been issued on the account on October 19, 2004. And because of these transactions and the requirement of the federal law and the suspicious nature of these transactions that perhaps violated Nebraska campaign laws, Mr. Stinner filed a suspicious activity report with the FDIC to protect himself and his bank. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion? Senator Flood, followed by Senator Combs.

SENATOR FLOOD: Thank you, Mr. President, members. I'm just responding to some of the debate and I want to say one thing. I think this has been an excellent discussion. It has been a debate on the facts. It has been a discussion about what the law is and what our role as legislators is in this case. And I want to start my comments with reference to the Mr. Mock report on page 25. Senator Bourne, in his floor discussion, talked a lot about this test. If only it were that easy. If only there were a page in our statute books or our constitution that we turn to and it gives us a road map that clearly defines each and every step of what impeachment, misdemeanor in office means. In fact, there is no test. There is no black and white statutory test. This test, this page 25 test from the Mock report, is an attorney's opinion as to what the elements are for impeachment. And I think he does a good job, in sub A there on page 25, of talking about a crime or a misdemeanor. A mere neglect of duty willfully done with a corrupt intention. That's all true and correct. Related to the duties of the office, where did he get that from? As you will note on page 25, it appears Mr. Mock got that from the Douglas case in 1984. Senator Fischer has been talking about the Douglas case and so let us sit down and look at the differences and distinguish Douglas from Hergert. First of all, in the Douglas case, at that time you could testify to a legislative committee or subcommittee and there was no oath to tell the truth. There was no technical requirement that you, under oath, respond to questions from a Legislature under oath and truthfully be honest in your answers. At the time, the constitution looked different in 1984 when the Supreme Court looked at the Douglas case. First of all, the burden, proof

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beyond a reasonable doubt, it was a criminal-like proceeding with the highest burden in the land. After Douglas, we changed that. We brought the standard down as a state, the citizens of this state voted to bring the standard down to clear and convincing. And in this case, there was a technical obligation to follow the laws of the state and to abide by your oath. And in this case, Mr. Hergert allegedly, as we have from the evidence, and Mr. Mock agrees, he fraudulently, knowingly filed a statement on January 11, 2005, that was knowingly false. And then Senator Bourne raises the question, well, he signed it on the 4th, he got it to the Treasurer on the 6th, it was mailed on the 10th, and on the 11th it was received. The statute at issue in this case is found at Nebraska 49-14,134. It says here, any person who files a statement or report required under the act; it does not say who signs. I don't want to be a part of a witch hunt. I did not wake up one morning in the middle of September and say we couldn't impeach Dave Hergert because I wanted to fight with Senator Chambers. Just the opposite, I wanted to be able to look at the law and say, this is what my duty as a state senator is. And when the State Patrol report came back and there was information in there regarding the January 11 filing, and I stress the word "filing," I changed my mind. And when I look at this in the big picture, I ask myself this question. What will the Supreme Court do with the supposed test on page 25, knowing that there is this principle of stare decisis?

SENATOR CUDABACK: One minute.

SENATOR FLOOD: And stare decisis in Latin says the courts are going to try and follow their previous decisions, but they have to look at each case with regard to the facts, distinguish that from the time the prior case was adjudicated in front the court, and to look at any changes in the law. We've changed our law, we have different facts, we have an actual oath, we have a technical violation. Those are the things that are important when you look at what the facts are in relationship to the law. And at the end of the day, our job is to decide whether to send articles down the hall. The Supreme Court will ultimately decide what and how this should be disposed of, this matter. I like the discussion on the facts. I like the fact that we have state senators looking at the Mock report. I looked at that

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report and that's how I made my decision, because Mr. Mock said it meets the burden of clear and convincing evidence with regard to the January 11, 2005, filing. That's why I changed my mind. Not only do we have the January 11, 2005, filing; we had our own attorney saying that...

SENATOR CUDABACK: Time, Senator.

SENATOR FLOOD: ...you can meet that burden. Thank you.

SENATOR CUDABACK: Thank you, Senator Flood. Senator Combs.

SENATOR COMBS: Thank you, Mr. President, members of the body. And I must say, I really do appreciate all the dialogue that has taken place. I've learned a lot and I can honestly say that my mind was not made up when I sat down. And as this has progressed over the hours, I have been able to make a decision based on what I've been hearing. Words have meaning. He's not looking up. Okay, it is his quote. Words have meaning. The word "impeach" means just to accuse, charge, or bring to court. So impeachment means the act of bringing someone to court. It does not indicate guilt or innocence as being determined by the act of the impeachment itself. It means that a decision has been made that further examination of the action is necessary. The crux of this decision for me as far as the letter of the law lies in when the act occurred that actually broke the law. At this point, we have attorneys in this body who cannot agree among themselves on this legal question. And as I've said before, I am not an attorney. I am a citizen representative who is charged with sorting out the facts as they relate to the need for a court decision to be made; the definition of impeach. We're being told on one hand that we are to accept today that there is no chance that the Supreme Court will say that he committed an impeachable offense based on their interpretation of the events. Then on the other hand, we have attorneys in the body who are opining that indeed what transpired prior to winning the election does count as an offense that needs to be brought to the court; again, the definition of impeach. This dilemma in the letter of the law has not been made clear or brought to a resolution yet for me in my mind. The spirit of the law goes without saying for me. In the documents that I've

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read, it seems that he admittedly meant to avoid allowing his opponent to obtain the additional funds that he was entitled to receive. In the letter of the law, we have an official opinion issued by Clarence Mock that agrees with one side. And now we've heard attorneys in the body that take the opinion on the other side. Words have meaning. And the word "opinion" means estimation, guess, belief, view, inference. We have many opinions here and they are views and estimations of what happened along with the inability to provide Regent Hergert with a modicum of a fair opportunity to represent himself before a bar. If he's not guilty, no harm, no foul. If he is guilty, then we won't be able to say we were wrong. If we have to admit we were wrong, at least we've erred on the side of trying to do what was right. When many opinions exist and final decision is required as to the letter of the law, I believe the prudent decision for me, a nonattorney, is to defer to a higher power for that decision. Words have meaning. Impeach merely means to bring an issue before a court. If justice is to be rendered and it is not clear, in my mind, as to which opinion serves justice the best, I must err on the side of caution and my own conscience and allow other attorneys at a higher level, the Supreme Court, to render proper justice with their review of what happened. I would be remiss in carrying out my duty as I see it and as I've been given it today, and I take it very seriously, on this issue. Senator Bourne has posed the question,...

SENATOR CUDABACK: One minute.

SENATOR COMBS: ...does this behavior meet the test? My question is, who is best qualified to render that decision? Is it Senator Beutler? Is it Senator Chambers? Is it Senator Brashear? In my mind, it is the Supreme Court.

SENATOR CUDABACK: Thank you, Senator Combs. Further discussion? Senator Brown, followed by Senators Schimek, Beutler, Langemeier, Bourne, and others.

SENATOR BROWN: Thank you, Mr. President, members. Last year when we took up the resolution on the Hergert matter, I did not vote. I did not vote because I didn't know enough about the

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actions to feel that I could make that decision at that time. After reading the Mock report, I have an opinion. And that opinion is very low. And it is based not on what I've heard about him or anything, it's based only on his own actions, which I have come to believe were willful and corrupt. There are two reasons that I believe that. I believe that there is intentionality shown. I think you can see it from the examples of his having done things in the primary, received counsel not to do them, and doing them again. I think the bank loan evidence is very compelling. I think the testimony of his treasurer is compelling in terms of the intentionality. And I believe that he has continued to lie about what happened and is happening. And I particularly resent his assertion to the public that the Legislature did not give him a chance to tell his side of the story. I think to his impugning of us is something that I resent as a member of this body enormously. I am certain for myself that we have satisfied subsection (a) of Article V, Section 5 (sic) of the Nebraska Constitution. What I'm not as satisfied about, and it is the single issue on which my decision hinges and I still don't know what I'm going to do, is whether we have satisfied subsection (b), that the activities are related to the duties of office. And I've listened very closely to what Senator Chambers has said. I do have a friend who's a lawyer who I respect a great deal who says that the first duty of any elected official is to not subvert or corrupt the election process. And he believes that Regent Hergert did that and that that is grounds. And I would like...if Senator Bourne would yield to a question, I would...

SENATOR CUDABACK: Senator Bourne, are you available?

SENATOR BOURNE: I am, thank you.

SENATOR BROWN: Senator Bourne, I don't know if you heard what I just said but I have a friend who's a lawyer who said that the first duty is not to subvert or corrupt an election process.

SENATOR BOURNE: Not to do what again, Senator Brown?

SENATOR BROWN: Subvert or corrupt the election process.

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SENATOR BOURNE: Okay.

SENATOR BROWN: What is your response to that?

SENATOR BOURNE: The first duty of whom?

SENATOR BROWN: An elected official.

SENATOR BOURNE: And that's set forth where?

SENATOR BROWN: That was just something that he suggested. I'm not saying that it's set forth.

SENATOR BOURNE: Right.

SENATOR BROWN: I'd just like you to comment on that.

SENATOR BOURNE: I really don't have any comment. I mean, because Senator Beutler has said, the oath is the oath. And I've never heard what you're referring to. That could be that attorney's opinion.

SENATOR BROWN: It...yeah, it very well may be.

SENATOR BOURNE: And I got to tell you, we've had so much opinion and so much "I think this, I think that" that, I got to be honest with you, I think that your statement just kind of throws another cloud on the issue. And I don't mean to say that in a bad way.

SENATOR CUDABACK: One minute.

SENATOR BOURNE: But I think the oath is what is set forth here that Senator Beutler handed out. And anything beyond that is someone's opinion...

SENATOR BROWN: Right.

SENATOR BOURNE: ...as to what the oath is or obligations are.

SENATOR BROWN: Okay, I think that we have two issues before us.

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We have whether we believe that there is a pattern of behavior that demonstrates corruption, and I think we have that. That's my opinion.

SENATOR BOURNE: But I...

SENATOR BROWN: And my second...no, I'm just...the second issue I have before...I think we have before us is, should we impeach? And I have not had that satisfied for me. The one thing that...and some lawyers have said that we should look at it as...

SENATOR CUDABACK: Time, Senator Brown. Thank you, Senator Brown. Senator Schimek, followed by Senator Beutler.

SENATOR SCHIMEK: Thank you, Mr. President and members. I was off the floor this morning and did not get my light turned on until after lunch. And I suspect I'm about the 30th speaker on this issue, somewhere along that number. And the amazing thing to me about this debate is even though I'm number 30, people are still listening to what everyone has to say on this issue. And I have learned a lot from this discussion, from attorneys and from nonattorneys. And I wasn't fully, fully formed in my own mind about what I wanted to do today. I did vote as a member of the committee, the impeachment committee, to send this to the floor. But I think that the discussion today has helped solidify that initial opinion decision. And let me tell you why. As the Chair of the committee that oversees elections and the Accountability and Disclosure Commission, it has been my instinct from the very beginning that we need to do everything we can to make certain that we have fair and clean elections in this state. And I think that there are a lot of things that are important to our democracy, things like freedom of speech and free elections where we have ballots and not bullets that determine the orderly process of changing administrations and changing elected officials. But underlying it all, underlying everything is that election process itself. And if we can't reassure our citizens that we have fair and clean elections, then they are going to lose confidence in that election process. And so I believe, like many speakers before me, that there were clear violations and intentional violations. So on that count

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alone, I will vote for impeachment. The second area that concerns me is...I have to ask myself the question: Does the punishment fit the crime? And I've heard speakers on both sides of that say that it either does or it doesn't. But let me ask you this question. Do the fines imposed really fit the crime? I mean, that's not very much of a punishment for somebody who's spending a lot of money in the election process. So if it's not adequate, where do we go from there? Where do we turn? There's nothing else that I'm aware of in the statute books. And maybe there should be, maybe we need to look at our accountability laws and our election laws. Maybe we need to do something else. But for me,...

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: ...that next step then is impeachment. And Senator Combs, you really nailed it, as far as I'm concerned, about what impeachment really is. And based on what you said as well as what a number of other people said, I think impeachment is that next step. And maybe we haven't used it very often, but maybe we haven't used it often enough either when there are clear violations of the laws in Nebraska. I think you just said one minute, didn't you, Mr. President?

SENATOR CUDABACK: I did.

SENATOR SCHIMEK: Well, I was going to give some time to Senator Brown but I'm not sure there's enough. I just want to commend everybody...

SENATOR CUDABACK: Ten seconds.

SENATOR SCHIMEK: ...for very thoughtful conversation on this issue. It has been very good.

SENATOR CUDABACK: Thank you, Senator Schimek. Senator Beutler, followed by Senator Langemeier.

SENATOR BEUTLER: Senator Cudaback, members of the Legislature, let me try to build on Senator Schimek's remarks and on Senator Brown's remarks and questions. The statement has been made that

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this is a well-established area of the law. When I started out my conversation with you, I intended to make clear to you if I could that, quite to the contrary, this is not an established area of law. Yes, the Douglas kinds of cases, the Governor Butler kinds of cases where there's clearly official duty, that's settled that it's related to the office. And over here on the other side, if there are offenses that are completely personal in nature, there's Nebraska precedent for that. But as far as election laws are concerned and whether the whole area of election laws are related to the office, there is no Nebraska case on that point. It is a case we call...what we call a case of first impression. And the court is going to be trying to decide, what's good public policy? And should we include those, would that be good public policy? And they'll look at the oath of office and say, we've got in our constitution the connection between the area of election laws and the area of official duties. And they'll look at all of the other rationale and reasoning for determining one way or another. And they will decide for the first time in this state whether election laws will be determined to be related to the office. There's nothing now that says they're not, nor is there anything that says they are. We're all guessing. But let me quote for you a Florida case that was not cited by Mr. Mock, and probably rightfully so in the sense that it wasn't decided on this basis. But there was a concurring opinion that gave the rationale for modern law in this area and the rationale for including election laws within the definition of misdemeanor in office. Because Florida has that definition, misdemeanor in office. And the judge says, I think it is far from axiomatic that illegal conduct or activities of a prospective holder of the office of governor prior to his entry upon performance of his official duties are necessarily beyond the reach of impeachment after assumption of office, particularly where the conduct or activity has an impactful carryover and baneful effect or influence upon the official action or conduct of the officeholder or devolves upon him a positive duty to see that the laws of the state are faithfully executed. For example, if it should appear that such incumbent officeholder has knowingly violated the statutory policy of this state governing the manner and mode of election to office, either singly or in participation with others, and having taken the prescribed oath of office and entered upon the

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performance of the official duties knowing that said violations have occurred but fails and continues to fail to exercise whatever capacity he may have as a responsible citizen and officeholder to seek the lawful disposition of those violations of which he has knowledge, a breach of public trust may well result sufficient to comport...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...with the necessary grounds for impeachment. He goes on to say, to the extent therefore that statutory violation in the form of nondisclosure of campaign contributions continues to exist concurrently with the incumbency of an elected officeholder who knowingly has the duty to report them, I see little difficulty in finding the requisite conduct necessary to meet the jurisdictional test of a misdemeanor in office. And finally, it may strain credulity to believe an elected officer will admit or plead guilty to a knowing and flagrant violation of the Corrupt Practices Act and surrender his office. But theoretically, when such a violation has been committed, it is a breach of public trust for the public officer to harbor the guilty knowledge that he has won the office unfairly and in violation of the rules of the campaign game and not to have taken action to...

SENATOR CUDABACK: Time, Senator Beutler.

SENATOR BEUTLER: ...requite the public wrong he committed, and so forth. And a stunning...

SENATOR CUDABACK: And that was your third time, Senator.

SENATOR BEUTLER: Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Langemeier, followed by Senators Bourne, Brashear, and Baker.

SENATOR LANGEMEIER: Mr. President, thank you. I'd yield my time to Senator Brashear.

SENATOR CUDABACK: Senator Brashear.

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SPEAKER BRASHEAR: Thank you, Mr. President, members of the body. Thank you, Senator Langemeier. I'm not...this will be my last time to speak. Even though my light is on, if somebody else needs my time, then they can have that if I get through this. I'm going to modulate my approach as much as possible. The first thing I want to do, because it's the most important, is to the extent that particularly Senator Beutler--I've talked with Senator Chambers in the meantime--was offended, I'm sorry. I do not...I guess I feel like I need to state it. To say that something is political, in my judgment, is not to say something bad about it but it is to characterize it. Political is not illegal, unethical, or immoral. But it is political and I don't think it's wrong to call something political and I believe this is political. I believe that there are politics in the water fights. I think there are politics in education. I think there are politics in pro-life, pro-choice, and gun issues and the like. I was not trying to say that any...I was speaking about what seniority and effectiveness contribute to your ability to function within the system. That was my point. I did not mean to offend and I'm sorry if I did. Now let me return to the comments about process. If this were going to be an impeachment on the campaign finance violations which were acknowledged and are still impeachable, if they are impeachable, I think that would be fine. But when I talked about the stacking, hiring more lawyers and so on, I'm trying to sensitize you to think about what we're doing here. One of the charges is obstructing a government operation. That's because there was a State Patrol investigation by the Attorney General, that in and of itself resulted in no charges, which then was handed over, 700 pages, and carefully examined to see if anybody could find anything that they on their own concluded without adducing testimony that there was something wrong with. Do we really want to make ourselves and officeholders subject to that sort of thing in the event the Attorney General investigates one of us and concludes to do nothing? But then the record should be separately subsequently examined to determine if we're impeachable even if we're not prosecutable? That illustrates where I'm trying to cause us to think. The other one, I'm telling you I am very, very bothered by the stacking technique that endeavors to use the oath of office. Because if we are going to turn...you may

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laugh and you may not, you may think I'm being ridiculous but I'm going to say it because it occurred to me. We start talking about improperly influencing an elector and taking old, old case law that used to involve bribes and corruption and...

SENATOR CUDABACK: One minute.

SPEAKER BRASHEAR: ...and buying votes and false contracts and so on. And now we're going to say improperly influencing an elector is impeachable. When I campaigned door to door--shame on me, I don't like to admit it too often and I hope you'll forgive me--I said I was in favor of term limits. Stupid me. I changed my mind. Did I improperly influence an elector? I was elected and I've never been challenged. I'm just...this oath of office, I'm sorry, it's good technique, it's great technique, it's legal technique. We do it all the time. It doesn't mean you have to agree with it. Do we want to stack that in? And then, to give you another illustration, do you really want to bring federal law, over which the state has no jurisdiction, it doesn't even claim it's a state offense, but mail fraud, because you're so eager...

SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Time.

SPEAKER BRASHEAR: Are we that eager that if you make a false statement or an omission...

SENATOR JANSSEN: Time, Senator Braashear.

SPEAKER BRASHEAR: ...in your campaign reports and you put it in the federal mail, that now we want to tie in mail fraud? Do we really want to go there? Or if we're going to do this, do we want to trim it back and maybe lose but trim it back...

SENATOR JANSSEN: Time.

SPEAKER BRASHEAR: ...to what it was all about?

SENATOR JANSSEN: Senator Bourne, your light is on next.

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SENATOR BOURNE: Thank you, Mr. President, members. I want to talk about, and I'm going to refer back to the Mock report, about relating to the office. Mr. Mock went through a whole host of cases from other jurisdictions as well as our own to find out what that means. And you can follow along with me, I'm going to start on page 31 in a Florida case. Misdemeanor in office is something which amounts to a breach of the conditions tacitly annexed to the office, includes any wrongful official act or omission to perform an official duty. There is a case from, it looks like Montana. Misconduct is any act performed by virtue or authority of office. A Minnesota case, construing a statute permitting the removal of a school board commissioner if he be found inefficient or guilty of any acts inconsistent with the duties of office. The Minnesota Supreme Court noted that in such cases, this is very important, it is necessary to separate the character of the man from the character of the officer. Another case in Texas, impeachable offenses are designated as high crimes and misdemeanors which, in effect, means nothing more than grave official wrongs. I want to go on to page 35 of the Mock report. The office of Regent did not impose a duty upon Hergert to file a post-election campaign statement pursuant to Nebraska statute. The requirement of filing the campaign statement cannot be a duty of holding the office because even the losing candidate must file the post-election statement required by Section 49-1459(1)(c). Hergert filed the post-election campaign statement neither because he held the office of Regent nor pursuant to his authority as Regent. So when Senator Beutler says that this area of law is not clear, I respectfully disagree with him. I think it's crystal clear. In order to impeach this man, you must show that his conduct related to the office. Senator Beutler and Senator Chambers would have you believe that the campaign statement that he filed on January 11 is that. It does relate to the office, according to them. But again, if you read the Mock report carefully, if you read through those cases from all the other jurisdictions, Senator Combs, it does not apply to the office. It's clear. We can absolutely impeach Mr. Hergert. We can do that today. What I'm saying to you is that if we do that knowing, having a strong indication that it will not result in impeachment in the Supreme Court, my question to you is, why are we doing this? Why are we

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doing this? If we know full well that he will not be impeached in the Supreme Court, it makes no sense to me that we go forward with the impeachment. Mr. Mock, in the conclusion in the Mock report, I think is really...it summarizes it. It again talks about how the well-established test the court uses, our court uses, it's that prong test that I showed you, I believe it's on page 25. Senator Chambers has indicated, he talked about it but he forgot the word "and." And the important part is, must relate to office. And I got to tell you that I think that...and this is kind of addressed to Senator Schimek. I'm a minority member of this Legislature, party-wise. You know, if I, for some reason, as a minority party member, offend somebody in this body, if we go forward with an impeachment that doesn't relate to the office, the next thing you know, we'll be impeaching people because they're a minority party member or some other reason. This is no different than if an individual had a DUI. We could impeach him then, him or her. If they hadn't paid their taxes, their child support. Look, we are...

SENATOR JANSSEN: One minute.

SENATOR BOURNE: ...we are ignoring the very basic prong from the test on whether or not to impeach someone. You cannot impeach somebody unless it relates to the office. The Minnesota court said it well. We must separate the character of the man from the character of the office. This is not an impeachable offense. I would strongly urge you to vote no on this resolution.

SENATOR JANSSEN: Thank you, Senator Bourne. (Visitors introduced.) Senator Brashear, your light is on next.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Senator Connealy, followed by Senator Smith.

SENATOR CONNEALY: Question.

SENATOR CUDABACK: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on LR 449? All in favor vote aye; opposed,

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nay. Voting on ceasing debate. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, to cease debate.

SENATOR CUDABACK: The motion was successful. Debate does cease. Senator Chambers, you're recognized to close on your motion.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the state, as should be the case, is watching what we do here today. We have talked about honesty, dishonesty, ethical conduct, unethical conduct. Nobody has said at any point that Mr. Hergert has not violated the law multiple times. It has been conceded that he has knowingly and intentionally filed false reports. As Senator Flood pointed out, the Mock report said there is clear and convincing evidence that that January 11 filing of Mr. Hergert violated the law. What we have to remember here today, tailgating on what Senator Combs pointed out, is that we are merely turning the matter over to the court when we impeach. What is the standard that we apply? Not proof beyond a reasonable doubt, because the court doesn't even use that. Our standard is the lowest one of all, probable cause. All probable cause means is that an improper act was committed and there's reason to believe that the accused committed it. But that doesn't tell us the standard. What is probable cause? Simply an impression that there is more evidence on one side than the other, however slight, that the existence of a fact is more likely than not. That standard has been more than met. The crimes that were committed have even been admitted. Our responsibility under the constitution--not a statute, not anybody's opinion--is to bring an impeachment action when there is probable cause to believe that a person violated the law or committed an inappropriate act. And I'm going to talk about what Senator Bourne keeps mentioning in connection with the duties of the office. I read for you where the Nebraska Supreme Court in the Douglas case said that as a matter of law, an elected official has the duty to display honesty, integrity, truthfulness, and such things as that. That is a matter of law, meaning you don't have to offer evidence to prove it. That goes all the way back to the common law. Senator Bourne said both

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the loser in a Regent's race and the winner must file that final campaign statement, and since the winner and the loser must file it, it has nothing to do with the office. Oh, but it does, because a specific duty is placed on whoever is running for that office, win or lose, so that makes it clear that this responsibility is attached to the office itself. If the duty is to file, whether you win or lose, the duty is attached to the office itself. And there is an additional duty on the winner. That duty is to file a truthful report. Everybody acknowledges that Mr. Hergert knowingly filed a false report. Knowingly.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: It would be a terrible thing if this Legislature would say that an elected official has no duty to tell the truth, has no duty to obey the law, that if he or she commits felonious conduct, the Legislature will look the other way and say nothing should be done. This ought to be handled by the Legislature by our doing the only thing the constitution made available to us, the only thing that can be done to remove an unfit civil or constitutional officer from office; that is, to impeach. We should vote to say that this matter will be turned over to the Nebraska Supreme Court where a trial will be held in conformance with the rules that govern judicial proceedings. It won't be like a debate on the floor of the Legislature. It will be a judicial proceeding. I'll ask for a call of the house, Mr. President.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye; opposed, nay. Please record, Mr. Clerk.

CLERK: 39 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The motion was successful. The house is under call. All unauthorized personnel please leave the floor. Unexcused senators, report to the Chamber. The house is under call. Senator Beutler would you please check in? Thank you. All members are present or accounted for. Senator Bourne.

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SENATOR BOURNE: Can we have a roll call vote in regular order, please?

SENATOR CUDABACK: In regular order, Senator? There's been a request for a roll call vote in regular order on the question. Mr. Clerk, please call roll on the question of adoption of LR 449.

CLERK: (Roll call vote taken, Legislative Journal pages 1628-1629.) 25 ayes, 22 nays, Mr. President, on the resolution.

SENATOR CUDABACK: LR 449 has been adopted. I do raise the call. Mr. Clerk, priority motion?

CLERK: Mr. President, priority motion. Senator Kopplin would move the Legislature adjourn until Thursday morning, April 13, at 9:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn, Thursday morning, 9:00 a.m. All in favor say aye. Opposed, nay. Ayes have it. We are adjourned.

Proofed by: ARG